THE

TRYAL

OF

John Barbot, Attorney at Law,

FOR THE

MURDER of *Mathew Mills*, Esq;

At a Court of Oyer and Terminer and General Goal-Delivery, held at the Town of *Basseterre*, in and for the Island of St. *Christopher*,

On FRIDAY *the 5th Day of* JANUARY, 1753,

BEFORE

The Honourable WILLIAM MATHEW BURT, *Esquire*, PRESIDENT of His Majesty's Council of the said Island, and others, His Majesty's Justices of Goal-Delivery.

To which is added,

The Prisoner's NARRATIVE of the Cause of the Difference between Mr. MILLS and Himself, and the several Steps that led from thence, to the Commission of the Fact for which he suffered.

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Rec. Oct. 27, 1892

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MURDER of *Mathew Mills*, Esq;

ON *Thursday*, the 4th of *January* 1753, a bill of indictment was found by the grand inquest for the island of *Saint Christopher*, against *John Barbot*, gentleman; for the murder of *Mathew Mills*, late of the said island, esquire.

On *Friday*, the 5th of *January* 1753, the court being met, the prisoner *John Barbot* was set to the bar, when the court proceeded thus:

Clerk of Arraigns. John Barbot, hold up thy hand. *(which he did.)* You stand indicted by the name of *John Barbot*, late of the parish of *Saint George Basseterre*, in the island of *Saint Christopher*, gentleman; for that you, not having the fear of God before your eyes, but being moved and seduced by the instigation of the devil, on the nineteenth day of *November*, in the twenty sixth year of the reign of our sovereign lord the king that now is, about the hour of five of the clock in the morning of the said day, with force and arms, at a certain place called *Frigate-Bay*, in the parish of *Saint George Basseterre* aforesaid, in the island aforesaid, in and upon one *Mathew Mills*, esquire, in the peace of God and of our sovereign lord the king that now is, then and there being, feloniously, voluntarily, and of your malice aforethought, did make an assault; and that you the said *John Barbot*, with a pistol of the value of five shillings, then and there charged and loaded with gun-powder and leaden bullets, which said pistol you the said *John Barbot*, in your right hand then and there had and held, into and against the aforesaid *Mathew Mills*, and then and there feloniously, wilfully, and of your malice aforethought, did shoot off and discharge; and that you the said *John Barbot*, with leaden bullets aforesaid, issuing and shot off out of the pistol aforesaid, then and there by the force of the said gun-powder, the said *Mathew Mills*, in and upon the right side of the body of the said *Mathew Mills*, and between the two last false ribs, and near the back of the said *Mathew Mills*, then and there feloniously, voluntarily, and of your malice aforethought, struck, penetrated, and wounded; and that you the said *John Barbot*, then and there feloniously, voluntarily, and of your malice aforesaid, gave to the said *Mathew Mills*, with the leaden bullets aforesaid, out of the said pistol, then and there, by force of the said gun-powder, shot off and discharged, in and upon the right side of the body of the said *Mathew Mills*, and between the two last false ribs, and near the back of the said *Mathew Mills*, then and there one mortal wound of the breadth of one inch, and the depth of nine inches, of which said mortal wound the said *Mathew Mills*, at *Frigate-Bay* aforesaid, in the parish aforesaid, in the island aforesaid, instantly died: And so you the said *John Barbot*, the said *Mathew Mills*, in manner and form aforesaid, at *Frigate-Bay* aforesaid, in the parish and island aforesaid, feloniously, voluntarily, and of your malice aforethought, did kill and murder, against the peace of our said lord the king, his crown and dignity.

Cl. of Arr. How sayest thou, *John Barbot*, art thou guilty of the felony and murder whereof thou standest indicted, or not guilty?

Prisoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Priſ. By God and my country.

Cl. of Arr. God ſend thee a good deliverance.

Priſ. May it pleaſe your honours, I have a motion to make, which is, that I may be allowed council on my defence, not only to matters of law, but alſo to matters of fact, and to make my defence in the fulleſt manner. What I aſk is no new thing, it being, as I am informed, uſual in *England*, and having been granted ſeveral times to priſoners in caſes of life and death in the king's bench of this iſland: which Mr. *Sollicitor General* knows to be ſo; having been himſelf concerned in thoſe caſes on behalf of the crown.

Mr. Sollicitor General, John Baker, *Eſq*; May it pleaſe your honours, I was indeed aware that this motion would be made by the priſoner, and in the manner it has been: and therefore beg leave to offer to the court what has occurred to me on the matter.

It is certain that the practice in *England*, 'till a very few years ago, was, that a perſon indicted for a capital offence, was never allowed council on a plea of not guilty, unleſs to matter of law only; and that to be ſtarted by the priſoner himſelf. And to this, beſides the known practice, the authorities in law are ſo full and plain, that you can look into no book, which at all treats of this matter, where this doctrine does not at once ſtare you in the face.

It is very true, that by the more modern practice, the rigour of this rule hath been ſomething relaxed; but then it is proper to ſee how far it has been ſo: and I can venture to affirm, that it has gone no farther than to permit council to examine and croſs-examine witneſſes; and never to the giving them leave to make obſervations on the evidence; or to draw arguments or inferences from it to the point in iſſue; or to do any thing elſe in the way of a formal or full defence. And this, tho' at firſt a pure indulgence, yet now ſeems to be ſo far grown into a right, that I believe it would be thought hard to deny it to the priſoner in the preſent caſe; and I ſhould readily conſent to the granting it, on behalf of the crown. But as to the allowing council in the full extent the priſoner has moved for it, I am confident no inſtance was ever yet ſeen of the kind in *England*; and I fear, for that reaſon, your honours can hardly be thought at liberty to allow it here.

This is a tryal of great expectation, and your honours will be very careful to do what is exactly right; and to leave no part of your conduct liable to cenſure hereafter.

Whether it be a hardſhip to deny full council to priſoners in capital caſes, I ſhall not pretend to ſay; but this is certain; that if it be one, it is of the law's making, and not of your honours; and therefore you cannot be blamed for it; tho' perhaps you might be ſo, for allowing an indulgence which the law and the practice of *England* do not warrant.

For the inſtances alledged by the priſoner, in the court of king's bench in this iſland, they have been but two or three, and of very late years only. It was no longer ago than the year 1744, that I myſelf was refuſed by that court to be of council for one *James Dixon*, who ſtood indicted for the ſame crime that the priſoner at the bar now does: ſo that any inſtances to the contrary muſt have been ſince that time; and none in the caſe of murder; tho' I think one or two of other felonies. But theſe are too recent to govern the determination of the court in the preſent caſe; which muſt therefore turn on this queſtion only; how far the permitting council for the priſoner, is in itſelf right, and agreeable to law.

I ſhall but juſt add, that in proof of what I have affirmed as to the preſent practice in *England*, I have here two printed tryals of perſons indicted for murder, the one ſo late as in the year 1741, and the other ſo very late as about ten months ago: the former is of captain *Goodyer*, commander of one of his majeſty's ſhips of war, for the murder of his brother *Sir John Dinely Goodyer*, bart. and the latter, of miſs *Blandy* for the murder of her own father; tried at *Oxford* Aſſizes no longer ago than the month of *March* laſt. The priſoners were both perſons of ſome rank and fortune in life, and ſuch as both could well afford the expence, and would not have wanted adviſers to move for full council; had it been a thing proper to have been aſked or granted. And yet in neither caſe is there the leaſt pretence on the part of the priſoner, of being intitled to it, or any thing like a motion for it; but (what is yet a ſtronger confirmation of what I have alledged, than a meer ſilence on the matter;) it is only aſked in the caſe of captain *Goodyer* to allow council for the priſoner to examine and croſs-examine witneſſes; and even that is inſiſted on by the council for the crown, to be a favour; and not a right; and 'tis there granted as ſuch.

The preſident then put it to the court for their opinion whether or how far the priſoner ought to be allowed council to make his defence; when the court unanimouſly declared it as their opinion that he ſhould be allowed council to ſpeak to points of law to be ſtarted by himſelf, and alſo to examine his own and croſs-examine the witneſſes for the crown, but no further.

Priſ. Then I pray your honours will pleaſe to allow Mr. *Frye* to be of council for me.

The court accordingly aſſigned Mr. Frye *of council for the priſoner.*

Cl. of Arr. Cryer, make proclamation for ſilence.

Cryer. O yez, O yez, O yez; his majeſty's juſtices do ſtrictly charge and command all manner of perſons to keep ſilence, upon pain of impriſonment.

Cryer. O yez; you good men, that are impanelled to try between our ſovereign lord the king and the priſoner at the bar, anſwer to your names and ſave your fines.

The Jury *were called over and appeared.*

Cl. of Arr. You, the priſoner at the bar, theſe men which were laſt called and do now appear,

appear, are thoſe who are to paſs between our ſovereign lord the king and you, upon the tryal of your life and death; if therefore you will challenge them, or any of them, you muſt challenge them as they come to the book to be ſworn, before they are ſworn: and you ſhall be heard.

Cl. of Arr. *George Weatherill*, look upon the priſoner; you ſhall well and truly try, and true deliverance make, between our ſovereign lord the king, and the priſoner at the bar, whom you ſhall have in charge, and a true verdict give, according to the evidence:

So help you God.

And the ſame oath was adminiſtred to the reſt, (which were ſworn) and their names are as follow:

George Weatherill,	ſworn.
Benjamin Clifton,	ſworn.
John Wilſon,	challenged.
Thomas Morgan,	challenged.
Alexander Douglas,	challenged.
William Jackſon,	challenged.
William Garvey,	ſworn.
Willet Payne,	challenged.
Charles Caines, ſen^{r}.	ſworn.
Archibald Thompſon,	challenged.
Abraham Steele,	ſworn.
Joſeph King,	challenged.
Thomas Edmead	ſworn.
William Iſles,	ſworn.
John Johnſon, ſen^{r}.	ſworn.
William Wells, jun^{r}.	ſworn.
Edmund Tannat,	challenged.
Davis Percival,	challenged.
John Fabie,	challenged.
Criſp Molineux,	challenged.
Andrew Armour,	challenged.

Priſ. May it pleaſe your honours, I challenge Mr. *Armour* for cauſe: my cauſe of challenge is this—Mr. *Armour* lately at *Montſerrat* was heard to ſay, that if he was upon my jury he would hang me.

Mr. Preſident. Can you prove this declaration of Mr. *Armour*'s?

Priſ. Yes. I pray that Mr. *Frye* may be ſworn to prove it.

Mr. Preſident. Swear Mr. *Frye*. (*which was done*).

Mr. Frye. I heard Mr. *Armour* ſay at *Montſerrat*, that if he was to be on Mr. *Barbot*'s jury, he would condemn him.

Mr. Sol. Gen. This is abundant cauſe to be ſure.

Mr. Preſident. Mr. *Smith*, go on with the jury.

Cl. of Arr.

William Buckley,	challenged.
Thomas Wylley,	challenged.
Chriſtopher Mardenborough,	ſworn.
Peter Carew,	challenged.
Richard Peterſon,	ſworn.
Edward Gillard,	ſworn.

Cl. of Arr. Cryer, count theſe.

George Weatherill,	*Charles Caines*, ſen^{r}.
Benjamin Clifton,	*Abraham Steele*,
William Garvey,	*Thomas Edmead*,
William Iſles,	*Chriſt^{r}. Mardenborough*,
John Johnſon, ſen^{r}.	*Richard Peterſon*,
William Wells, jun^{r}.	*Edward Gillard.*

Cl. of Arr. Cryer, make proclamation.

Cryer. O yez, O yez, O yez; if any one can inform the king's juſtices, the king's ſollicitor general, or this inqueſt now to be taken, of any treaſons, murders, felonies, or miſdemeanors, committed or done by the priſoner at the bar, let him come forth, and he ſhall be heard, for the priſoner ſtands now at the bar upon his deliverance; and all perſons that are bound by recognizance to give evidence againſt the priſoner at the bar, let them come forth and give their evidence, or they will forfeit their recognizances.

Priſ. May it pleaſe your honours, I humbly move that I may have pen, ink and paper.

Mr. Preſident. Ay, by all means.

Cl. of Arr. *John Barbot*, hold up thy hand; Gentlemen of the jury, look upon the priſoner, and hearken to his charge; he ſtands indicted by the name of *John Barbot*, late of the pariſh of *Saint George Baſſeterre*, in the iſland of *Saint Chriſtopher*, gentleman, for that he not having (*as in the indictment before ſet forth.*) Upon this indictment he hath been arraigned, and upon his arraignment hath pleaded not guilty, and for his tryal hath put himſelf upon God and his country, which country you are: your charge therefore is, to enquire whether he be guilty of the felony and murder whereof he ſtands indicted, or not guilty. If you find him guilty, you ſhall enquire what goods or chattels, lands or tenements he had, at the time of the felony committed, or at any time ſince. If you find him not guilty, you ſhall enquire whether he fled for the ſame. If you find that he did fly for the ſame, you ſhall enquire of his goods and chattels as if you had found him guilty; if you find find him not guilty, and that he did not fly for the ſame, ſay ſo and no more, and hear your evidence.

Jury. May it pleaſe your honours, we pray we may have pen, ink and paper.

Mr. Preſident. Mr. *Smith*, let the jury have pen, ink and paper.

Mr. Kerr. May it pleaſe your honours, and you gentlemen of the jury, I am of council for the king on this tryal; it is an indictment by which the priſoner at the bar ſtands accuſed of the murder of *Mathew Mills*, eſquire. The indictment ſets forth, that the priſoner at the bar not having the fear of God before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the nineteenth day of *November*, in the twenty-ſixth year of the reign of his preſent majeſty, about the hour of five of the clock in the morning, with force and arms, at a placed called *Frigate-Bay*, in the pariſh of *Saint George Baſſeterre* in this iſland, in and upon one *Mathew Mills*, eſquire, in the peace of God and our ſaid lord the king then and there being, felonioufly, voluntarily, and of his malice aforethought, did make an aſſault; and that the priſoner with a piſtol then and there charged with gun-powder and leaden bullets, which he in his right hand then and there had and held into and againſt the

ſaid *Mathew Mills*, then and there feloniouſly, wilfully, and of his malice aforethought, did ſhoot off and diſcharge; and that the priſoner with leaden bullets iſſuing out of the ſaid piſtol, by force of the ſaid gun-powder, the ſaid *Mathew Mills*, in and upon the right ſide of his body, and between the two laſt falſe ribs, and near the back of the ſaid *Mathew Mills*, then and there feloniouſly, voluntarily, and of his malice aforethought, ſtruck, penetrated, and wounded; and that the ſaid priſoner then and there feloniouſly, voluntarily, and of his malice aforethought, gave to the ſaid *Mathew Mills*, in and upon the right ſide of his body, between the two laſt falſe ribs, and near the back of the ſaid *Mathew Mills*, one mortal wound of the breadth of one inch, and the depth of nine inches, of which ſaid mortal wound, the ſaid *Mathew Mills* inſtantly died.

To this accuſation the priſoner at the bar hath pleaded not guilty, and for tryal hath put himſelf upon you gentlemen of the jury: it is, therefore, the duty of us who are of council for the king, to prove this horrid crime upon the priſoner to your ſatisfaction; and I make no doubt, we ſhall be able to ſupport this indictment upon the moſt violent preſumptive proof, that ever appeared on a tryal of this kind: if this ſhould be the caſe, I hope the jury will, under your honours direction, find the priſoner guilty of this murder. We ſhall proceed to examine the witneſſes for the king, as ſoon as the gentlemen who are to follow me have opened to your honours and the jury, the nature of the evidence that will be produced on this occaſion.

Mr. Sol. Gen. May it pleaſe your honours, and you gentlemen of the jury,

The priſoner at the bar, *John Barbot*, ſtands indicted of no leſs a crime than that of murder; the murder of one *Mathew Mills*, eſquire; I ſay, of *one Mathew Mills*; becauſe ſuch is the ſtile and form of the indictment; and not as ſuppoſing you are, or can be, any ſtrangers to the name or character of that unfortunate gentleman: for who the deceaſed was, his rank and diſtinction in life would not permit any one in theſe parts to be ignorant; and as to *what* he was; if there were any who knew it not in his life-time, they muſt neceſſarily have learned it from the general ſorrow and concern, and the many hearts that are yet bleeding, for his death.

Gentlemen, as to the murder of which the priſoner ſtands indicted, it is perhaps the hardeſt to be accounted for, as to it's cauſes and the motives to it, of any intended, any concerted, event, that has ever fallen out within the compaſs of your knowledge and experience. The two grand and ordinary motives to the committing of murder, are intereſt and malice. But, for the former of theſe, there does not ſeem to have been the leaſt proſpect of any advantage to be reaped by any one whatever, by the death of the deceaſed: though how many, and in how grievous a degree, will be ſufferers by it, God knows: and for the other motive, malice; one would have thought his amiable character and moſt unexceptionable conduct towards every one, muſt have ſecured him againſt the enmity and ill-will of any perſon living; and even ſtill we may venture to affirm, that no good man was, or could be, his enemy: yet that he had an enemy, (one, at leaſt, if not more; I ſay, that he had, at leaſt, one enemy) is but too apparent from the manner and circumſtances of his death: and I believe your conſciences will be abundantly convinced by the evidence, that that enemy was the priſoner at the bar: the conſciouſneſs of whoſe guilt, if that ſhould be the caſe, muſt be greatly aggravated by this conſideration, that he has robbed the world of a man, whoſe loſs he cannot make good to it in himſelf; and that there is no probability, that in the courſe of twenty ſuch lives as his, he ſhould ever be able to make amends to the great number of perſons whom he has render'd ſo unhappy, and made ſuch ſufferers by it: ſo diffuſive a ruin, ſo extenſive a miſchief, has been accompliſhed by a ſingle ſtroke of ſo inſignificant a hand!

Gentlemen, there are few murders committed, of which it is not with ſome difficulty and labour the authors are found out: for as the more atrocious the crime, and conſequently the greater the puniſhment attending it, ſo the greater the caution and ſecrecy uſed in the committing it, and the manner and means of putting it in execution, the more carefully ſtudied and concerted, in order to avoid a diſcovery, and eſcape the hand of juſtice.

And yet, gentlemen, in moſt caſes of murder (for, indeed, in ſome few inſtances, heaven has thought fit to reſerve the whole of vengeance to itſelf; but, I ſay, in moſt caſes of murder) it has pleaſed providence by ſome mark or another to point out the guilty perſon; and all the care and foreſight of the cooleſt and cunningeſt offenders, have not been able to guard againſt ſome token, ſome unthought-of circumſtance, which has left a door open to a diſcovery, when they imagined they had barred up all acceſs to it.

Thus, gentlemen, in the preſent caſe, though the priſoner at the bar flattered himſelf he had ſo effectually laid his meaſures as perfectly to ſecure him againſt (not the knowledge and diſcovery of his crime, for that he knew there were thoſe about him who could, and muſt, make publick; but againſt) the puniſhment which he knew by law was due to it; by taking care to have none preſent when he committed it, who could be legal witneſſes againſt him: yet I believe all his management and precautions of that ſort will ſtand him in very little ſtead; ſince by evidence unqueſtionably legal, ſo many and evident tokens of his guilt will appear; ſuch a train of circumſtances will be laid before you of various kinds, as when taken and conſidered together, will give ſuch light and ſtrength to each other, as to convince the moſt incredulous perſons, and ſatisfy the moſt ſcrupulous and tender conſciences, that the priſoner at the bar was the perſon by whoſe hand the deceaſed was murdered.

And this, gentlemen, as it is legal evidence, ſo is it ſufficient too, if it be ſuch as ſatisfies your belief, that he committed the fact. And indeed this is the beſt and only evidence, which

we

we can hope to meet with in almoſt all caſes of murder; where the caution and ſecrecy which I obſerved to be uſed in the committing it, makes a neceſſity of inveſtigating the truth by painful ſteps, and of tracing and hunting out the murderer, by following the track of circumſtances, as we can find light enough to diſcern and purſue it. For if the bare taking care to have no perſons preſent at the time of committing the moſt execrable crimes ſhould avail, in ſpight of the plaineſt and ſtrongeſt circumſtances pointing out the criminals, to ſcreen them from publick juſtice, it would hardly ever be poſſible, but by extreme accident, to convict the moſt flagrant offenders; and nothing were eaſier than to commit the worſt of crimes with abſolute ſafety and impunity.

Gentlemen, it were a thing greatly to be wiſhed, both for your ſakes and the ſake of this iſland, that it had not been made the ſcene of this abominable act: ſo ſhould you have been ſaved the diſagreeable taſk that is now impoſed on you; and the iſland the odium, which will perhaps unjuſtly, as well as unfortunately, be thereby brought upon it: I ſay, unjuſtly, becauſe, as you will hear from the evidence, tho' the matter was executed here, it was conceived and concerted elſewhere. The arrow was indeed thrown in this iſland; but it was firſt dipped in the poiſon that was generated in another: where, as you will hear, gentlemen, the priſoner at the bar was exerciſing himſelf in rehearſing this fatal tragedy, and making himſelf perfect in his part of it, ſome days before it was acted.

Gentlemen, as I before told you, the motive to this unhappy affair, is hard to be accounted for; yet all that can be conceived or imagined to have been a provocation to it, with the ſubſtance of what elſe you will hear in evidence in proof of the indictment, I ſhall relate to you; and though the provocation you will hear of was the ſlighteſt and ſtrangeſt that was perhaps ever known to the committing an act of this kind, yet I believe the priſoner will find it a difficult matter to aſſign a ſtronger or a better.

You muſt know, gentlemen, that on *Tueſday* the ſeventh day of *November* laſt, there being a publick ſale at the town of *Charles-Town* in the iſland of *Nevis*, of an eſtate in that iſland commonly called *Bridgwater*'s; the priſoner at the bar offered himſelf as a purchaſer, and accordingly bad for it the ſum of 2510 *l.* ſterling. The deceaſed, who was largely intereſted in this ſale, as having a demand for a conſiderable part of the purchaſe-money, and who, as well as many others, was not only ſurprized to hear the priſoner bid a ſum of money ſo far beyond what all the world muſt be ſenſible he was able to make good, but alſo juſtly offended at the priſoner's behaviour, which tended to throw every impediment in the way of the ſale that he could; ſaid, he deſired that there might not be ſo much *cavilling*, and that no *boy's-play* might be uſed on the occaſion; for that this eſtate had once before been ſold, and the purchaſe-money not paid: upon which the priſoner, with great heat, and a pertneſs peculiar to him, ſtept up to the deceaſed, and in modiſh phraſe told him, "*be expected to be treated like a gentleman.*" To which the deceaſed only replied, "*he ſhould uſe him and every one as ſuch.*"

And this, gentlemen, is all the provocation, which, on all the recollection and enquiry that can be made uſe of, it can be found was ever given by the deceaſed to the priſoner: ſince there appear not the leaſt traces of their having long before ſpoken to each other, or had any intercourſe on any occaſion at all; and it is almoſt a certainty that they never ſpoke to, or ſaw, one another afterwards, till the morning of the death of the unfortunate deceaſed: but this, gentlemen, according to the very high conceit which the priſoner had of himſelf and his own merit, was, it ſeems, ſuch an indignity, as nothing leſs than the taking away ſo important and valuable a life as the deceaſed's could atone for. And of this he was ſo full, and ſo blinded by his purpoſe, that on the *Friday* following, the tenth of the ſame *November* laſt, he declared in the ſtreet of this very town, that "*there was a certain gentleman in this iſland, whom he would either kill or be killed by in leſs than a fortnight:*" and indeed in leſs (and very little leſs) than that time the deceaſed was killed; and (as I believe you will by and by be perfectly convinced) by the priſoner at the bar. What could induce the priſoner to make this ſtrange and unneceſſary declaration of his intention, is difficult to ſay; nor is it at all ſatisfactorily to be accounted for, but from that fatality which it has pleaſed providence ſhall hang upon guilt, to convince men, that what he thinks proper ſhall be revealed, it ſhall not be in their power, with all their care and precaution, to keep ſecret. Gentlemen, in purſuance of this declaration, and in the interval between that and the nineteenth of the ſame month, when (as it is laid in the indictment) the deceaſed was killed; the priſoner took an opportunity to exerciſe himſelf in firing with piſtols at a mark; and, as the event has proved, became but too apt a proficient at it; having fatally improved himſelf to ſuch a perfection in it, as to enable him to accompiſh his deſign on the deceaſed; who was found dead of a wound apparently given from a piſtol between five and ſix of the clock on *Sunday* morning the nineteenth day of *November* laſt; the very night before which, as you will hear, the priſoner, in a very haſty manner, made his laſt will at a publick tavern in the town of *Charles-Town* in *Nevis*, where he delivered it into the cuſtody of one who was to have ſome concern in it. Gentlemen, from theſe circumſtances and this behaviour of the priſoner, previous to the murder, I believe no man, for his own private ſatisfaction, would look further for the perſon who committed it, than the priſoner at the bar. But from other more numerous, and much ſtronger circumſtances, which you will likewiſe hear from the evidence, and which I ſhall firſt open to you, I think all ſhadow of doubt whether it was the priſoner who committed it, muſt be entirely taken away. For, gentlemen, the night before the committing the fact, the priſoner, after having thus executed his laſt will, and delivered it out of his own cuſtody, went from the tavern into the country with one doctor *James Webbe*, at whoſe houſe he ſlept, or, at leaſt, made appearance of ſleeping; and accordingly,

accordingly, between nine and ten o'clock, he bad the *doctor* and his family a good night, and retired to the chamber allotted him, under pretence of going to bed; but in the morning when the *doctor* aroſe at his uſual hour, he found to his very great——I beg pardon; I was going to ſay, *to his very great ſurprize*; but that I can't take upon me to ſay; but however he did find, that the priſoner was gone from his houſe; and about eight or nine o'clock in the morning he ſaw him riding up to his houſe on his [the *doctor*'s] own horſe, and with his own *negro-boy* attending him. Where he had been while he had thus withdrawn himſelf, and what he had been doing, you will preſently hear. Gentlemen, about five o'clock, or very little after, that ſame *Sunday* morning, as one *John M'Kenley*, who is an overſeer at the plantation of Mr. *Spooner* near *Frigate-Bay*, was lying on his bed (for he had riſen, it ſeems, ſome time before, and had been abroad; but was now lying down again; when) a *negro-boy* whom he very well knew, called *Coomy*, who belonged to, and uſually ran with the deceaſed when he went on horſeback, came haſtily into the chamber, and even leaped on the bed, and with great emotion and ſeeming fright, told *M'Kenley* that his maſter was fighting on the bay with a gentleman come from *Nevis*, and that he feared his maſter was killed; the negro then inſtantly went out of the room, and mounting his maſter's horſe, on which he had rode thither, galloped back to the bay again. *M'Kenley* was going to ſaddle his horſe to follow him; but thinking that would take up too much time, and it not being more than a quarter of a mile, or thereabouts, to the place; he walked away as faſt as he could, to the place, where, when he came, he found *Coomy* ſupporting his maſter againſt his knees; but on coming cloſe to him he found the unhappy gentleman was actually dead, tho' ſtill warm; having juſt breathed his laſt. *M'Kenley* then aſking *Coomy*, who it was that had killed his maſter? The negro anſwered, it was Mr. *Barbot*, who was come from *Nevis*, and was then going back again; and added, if you will go to the ſea-ſide, I believe you will ſee him; for I am ſure he can't be gone far. *M'Kenley* then ran to the beach, which was about fifty yards from the ſpot where the deceaſed lay; but with a riſing bank between; and there ſaw a canoo with four oars and a paddle, rowing from the ſhore towards *Nevis*, with ſomebody dreſt in white ſitting in the ſtern; but by the perſon's back being towards him, and from the great conſternation he was in at the unhappy event, having himſelf a little while before been a ſervant to the deceaſed, he did not diſtinguiſh who the perſon was. However that, gentlemen, will ſoon be made appear to you; for about half an hour after, as the canoo was in it's way to *Nevis*, it was met by a ſchooner coming from *Montſerrat* to this port; the maſter of which very well knew the priſoner, and ſaw him ſitting in the canoo, dreſt in a white coat, and having on a laced hat; he will ſhew you that there was no other canoo then in ſight, than this one, which he purſued with his eye, 'till he ſaw it near the bay at *Nevis*, called *Molton's Bay*, where the priſoner was ſeen to land out of it about ſeven of the clock in the morning, by perſons who knew the canoo, and two of the principal negroes who rowed it. From thence, gentlemen, the priſoner walked up to the houſe of the plantation called *Bridgewater*'s, which was about half a mile diſtant from the ſea, and there enquiring for doctor *Webbe*'s negro-boy called *Pope*, ordered him to ſaddle the horſe; meaning, as you will hear, the *doctor*'s horſe, which, as you will find, the boy had brought thither about midnight, under the pretence of looking for his maſter; though he knew he was then at home. From hence, gentlemen, the priſoner rode back to doctor *Webbe*'s, where he had pretended to go to bed the night before, and which is about three miles diſtant from *Bridgewater*'s, and there diſmounting, finiſhed his glorious expedition, and reſted from his worthy labours. I muſt not omit, gentlemen, that a very ſenſible negro fellow, belonging to the canoo, as ſoon as they came back to *Nevis*, ſeeming greatly dejected and thoughtful, and his maſter preſſing him to know the occaſion of it, the fellow anſwered, "*he was afraid Mr.* Barbot *had done* "*ſome miſchief*"; which is thus far material, that it was ſaid before the news came from *Saint Chriſtopher*'s to that iſland, of the unhappy affair.

Gentlemen, as you may perceive by what I have ſaid, and will ſtill more plainly find from the evidence, the priſoner at the bar, whether to ſecure a further chance for his eſcaping the puniſhment due to his crime, or, it may be, deſpairing of other means or opportunity to accompliſh his purpoſe againſt the deceaſed, took care to draw him to a place of appointment, in order to give the act he committed the favourable conſtruction of a duel. But, in the firſt place, I believe you are not to be told, that were it really ſo, or were it ever ſo fair a tranſaction, as it is generally term'd, of that ſort, *that*, in the law, by which you upon your oaths are to try the priſoner, is abſolutely murder. Should that appear or be believed, how far it might be an argument for mercy or pardon, is the buſineſs of another place, and of other perſons: but the ſerious and ſolemn buſineſs of this day, and of you, gentlemen, is upon your oaths to ſay, whether you believe, upon the whole matter, the priſoner killed the deceaſed or not. And in the next place, gentlemen, I believe you will be too well convinced by the evidence given, that the notion and form of a duel was only meant as a cover and a ſanction to the intended murder; and that the deceaſed was unqueſtionably killed before he was provided, or could have a chance of worſting the priſoner or defending himſelf: for you will find, gentlemen, that by the wound given, which was in the ſide, and the courſe it took along his belly, the deceaſed could be in no offenſive poſture; and it is plain his piſtols neither were, nor had been, loaded. And now, gentlemen, we ſhall call the witneſſes to theſe ſeveral facts which I have mentioned, from whoſe mouths, and on whoſe oaths, you will have a confirmation of what it was my duty thus to open to you, in order the better to conduct your attention

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tion to the proper and material parts of the evidence.

Mr. Horne. May it pleaſe your honours, and you gentlemen of the jury,

I humbly beg your honours indulgence, and, gentlemen of the jury, your favourable attention to my ſpeaking in behalf of the crown, and in ſupport of what Mr. Sollicitor General has opened to you with ſuch ſtrength and perſpicuity. And, though I muſt long lament the fatal deed which brings me before you this day; yet, it is a circumſtance of no ſlight ſatisfaction to me, when I obſerve the ſolemnity of this aſſembly, this unuſual concourſe of people from all the iſlands, ſpeaking the importance of the occaſion, and the expectation of the publick, that my firſt appearance before your honours, is, in a cauſe that requires no extraordinary ability in the advocate, no art to gloſs, or ſophiſtry of arguments to diſguiſe it; that I am to ſpeak to a ſubject that lies level to every underſtanding; and to a crime whoſe malignity is confeſſed by every heart. And as in the courſe of this tryal I ſhall not abuſe you, or diſhonour myſelf, in employing any diſhoneſt artifice; ſo am I as ſteadily reſolved to ſuppreſs no truth (however offenſive to any man) that may be neceſſary to detect guilt, to retrieve honour from the fantaſtick notions under which it labours, and to engage your juſtice to the community, as well as to an injured family, in becoming inſtruments in the hand of heaven to puniſh the guilty, and to determine agreeably to that denunciation of vengeance from heaven, that, *whoſo ſheddeth man's blood, by man ſhall his blood be ſhed.*

Such is the natural odium that every man conceives againſt the crime with which the priſoner is charged, ſo much is the common intereſt of man affected by murder, that at the name of it we take the alarm, with impatience and ſympathy we hear and feel the ſtory, with ardor we purſue the murderer, with eagerneſs apprehend him, with pleaſure deliver him up to juſtice, with ſatisfaction hear the ſentence, and with approbation all acknowledge that blood for blood is a juſt reſtitution. Is there a crime, in the diſcovery of which the finger of God has been ſo often held forth? For when man's invention has entrenched the criminal with artifice behind artifice, and covered him in a diſguiſe fitted to cheat the moſt inquiſitive eye, heaven has wonderfully revealed the man of blood——That providence which is attentive to the fall of a ſparrow, can never be regardleſs of the moſt excellent of his creation. The firſt murderer carried about with him a diſtinguiſhed mark of divine vengeance; and for the innocent blood of a brother, wandered a vagabond through the world.

Crimes ſo odious in their nature, which the laws have puniſhed with death, are generally contrived with the utmoſt caution, and perpetrated with the profoundeſt ſecrecy; for he who knows that an ignominious death muſt be the certain conſequence of the diſcovery of his villainy, will, as the priſoner has done, employ all his artifice, and exert his utmoſt ability, in the concealment of it; while innocence acts always in open day, where the world may be ſpectators of it's actions. But, gentlemen of the jury, I am perſuaded that the witneſſes will ſatisfy your conſciences, that in ſpite of all the artful preparations that attended the contrivance, and the ſtudied precaution and ſecrecy that attended the perpetration, of this crime, that no man on earth but the priſoner at the bar could be guilty of it; for notwithſtanding his life depended upon the concealment of his crime, and the knowledge of this kept alive all his art and caution when he was retired to himſelf, and was by himſelf concerting his ſcheme; yet in company you'll be ſurprized to find his vanity (ſuch is the fatal, the providential, inconſiſtency of guilt) throwing him off his guard, and drawing from him, the diſcovery of his reſentment, and a confeſſion of his intention. You will hear him expreſſing his malice to the deceaſed, vowing vengeance againſt him, and ſetting but a fortnight's ſhort period, to a life, which, from it's amiable and uncommon value, all good men would have wiſhed to have had protracted to the happieſt old age.

You will be able, gentlemen, to trace him almoſt ſtep by ſtep through his whole track, and keep him almoſt conſtantly in view, from the firſt opening to the cloſing of this abominable deed. As Mr. Sollicitor has already opened the fact and the evidence of it; it would be impertinent in me to abuſe the patience of the court and jury, by an unneceſſary repetition of them in all their circumſtances: and had there been nothing elſe proper to offer to you, gentlemen of the jury, upon this occaſion, I ſhould not riſe, however painful for me to be ſilent on a ſubject that has ſo ſenſibly affected me, and muſt ſo long lie heavy at my heart.

The council for the king will not, gentlemen, go out of the ordinary road of juſtice, and have recourſe to an unuſual evidence, even upon ſo extraordinary an occaſion, when you are enquiring into the murder of ſo excellent a man. We ſhall not therefore attempt to produce poſitive teſtimony *: for, though we have ſuch as no law, either of our mother country, or of theſe colonies, prohibits; yet good policy in general, the ground of all law, and in particular the policy of theſe iſlands, forbids it. Indeed there is no neceſſity for it, the evidence of concurring circumſtances being in the preſent caſe, as well as many others, more convincing, than the teſtimony of any one poſitive witneſs. The evidence of the priſoner's guilt muſt then reſult from circumſtances, but circumſtances ſo ſtrong, ſo connected, reflecting ſuch light upon each other, as will amount to the moſt violent preſumption, which, gentlemen, their honours will inform you, is in law a full proof.

And here, gentlemen of the jury, as it is impoſſible in ſuch ſmall communities to avoid hearing the conjectures and opinions that are thrown out in all matters of moment ſufficient to engage the publick attention; give me leave to take notice of two notions that ſeem to have been artfuly given out, and induſtriouſly propagated, on this occaſion.—" That as the teſti-
" mony of the ſlaves preſent at this melancholy
" action, will not be offered, circumſtantial

* i. e. the teſtimony of ſlaves.

" evidence can be no proof; and that if the de-
" ceaſed thought proper to meet the priſoner,
" and was killed in a fair duel, the priſoner
" ought to be acquitted ". Nothing can equal the weakneſs of theſe aſſertions, but the boldneſs with which they have been maintained. For weak as they are, it ſeems they have found very zealous ſupporters. How deep, or how extenſive, the impreſſion and influence of them may be, I cannot ſay: but as the tendency of ſuch notions may be of pernicious conſequence, it becomes neceſſary to prove that they have no foundation, either in law or reaſon. For it would be to little purpoſe to aim at eſtabliſhing a fact upon circumſtances, if they were not to be regarded; and to as little purpoſe would it be (admitting the force of circumſtances) to prove the priſoner killed the deceaſed, if his doing it in what is called a fair duel, was believed to be a juſtification.

If, gentlemen, it be conſidered, that a witneſs may be bribed, and the bribe pervert and falſify his teſtimony; that a witneſs may be concerned in intereſt, and intereſt warp him into partiality; that a witneſs may be a *partaker* in the guilt; and the fear of puniſhment intimidate him into a ſuppreſſion of the truth; if theſe, I ſay, be conſidered, it will be allowed, that ſtrong circumſtantial evidence is more to be depended upon, than the poſitive teſtimony of a ſingle witneſs. For a ſeries of circumſtances which the wit of man could never forge, following one the other in order both as to time and place, and, as in the preſent caſe, coming from different witneſſes in different iſlands, where there was no poſſibility of concerting a ſcheme for the priſoner's condemnation; ſo many, and ſuch ſtrong, circumſtances pointing him out, from the firſt projection to the completion of his ſcheme, force a conviction upon the mind, and demand belief. Facts ariſing out of circumſtances are ſtubborn things, and will never lye.

Hence it is that in numberleſs tryals circumſtances alone have determined the jury. The caſe of *Harriſon* and doctor *Clenche*, and many others might be mentioned, but I ſhall only obſerve further, that this kind of proof is thought ſo ſtrong, that it is ruled particularly in the caſe of a baſtard child; that if it appears there has been an *endeavour* to *conceal* it's death, there *needs no proof* that the child was born alive, or that there were any ſigns of hurt on the body; but it ſhall be undeniably taken that the child was born alive, and murdered by the mother *. So that circumſtances always have determined, and always will determine, the jury in tryals, when there is no poſſibility of producing eye-witneſſes of the fact.

This, gentlemen, is no lately invented proof that has but juſt found a place only in our law-books; for I would (if I may preſume to take a liberty with it) refer you to a caſe of the greateſt antiquity, and moſt ſacred authority, that depended abſolutely upon circumſtance. You will anticipate me, I am ſure, and immediately perceive, that I allude to the celebrated judgment of the man tranſmitted to poſterity as the wiſeſt of the creation. No witneſſes as aſſiſtants to the birth, appeared in that caſe to evince the reality of the mother; the truth of the fact ſeemed to depend ſolely on the aſſertion of each intereſted party. Here was an act of juſtice to be done; the caſe was nice, the deciſion hard; even *Solomon*'s wiſdom was at a ſtand, 'till by a happy thought the alarming propoſal for deſtroying the child, produced a circumſtance that removed the difficulty. The tears and anguiſh of the one revealed the true mother, and prevailed againſt the vociferation and obſtinate perſiſtance of the other.

And indeed if there was no ground of belief, no evidence on which to determine, but from the direct and poſitive teſtimony of an eye witneſs; the mind would be left to fluctuate in perpetual doubt, and be irreſolute in the moſt intereſting concerns of life. If the proof that ariſes from circumſtance, from reaſoning and induction, be excluded out of our notion of evidence, it would prove too much; for how ſhould we be able to judge of the moſt important points, even of religion itſelf, either natural or revealed; how ſhould we be able to prove the moſt momentous of all truths, the exiſtence of the ſupreme being? The ſeveral parts of the univerſe are but ſo many *circumſtances* of creation, from whence is deduced the proof of a creator. If that abſurd and ſtrange opinion already mentioned was to prevail, no crime committed againſt ſociety would be puniſhed, but ſuch alone as were proved by direct and poſitive evidence; the conſequence of which in a little time would be, that no crime would meet a puniſhment at all, when the criminal had nothing to do but to ſin in ſecret, and ſin ſafely. There would be then an end put to the patient attention of courts, and the offices of judge and juror would be entirely uſeleſs.

One thing more give me leave to ſubmit to your conſideration. If this kind of evidence were excluded from the caſe of duels particularly, which are always carried on with the utmoſt ſecrecy and precaution, murders of that ſort could be rarely puniſhed. This conſideration too will grow ſtronger when you recollect, that if circumſtantial evidence is not to be admitted, particularly in duels, what opportunity, what encouragement, will you give to this romantick, this cruel, practice, in a country where the duelliſt's purpoſe to act in ſecret, will be aſſiſted by the intervention of our ſlaves, who are incapacitated to be witneſſes, and who are always at hand to carry on the dangerous intercourſe. An unhappy circumſtance attending our ſituation, (if circumſtantial evidence be rejected) that the moſt atrocious crimes may be committed with their aſſiſtance, without the fear being convicted on their evidence. What an inlet this to confuſion, and even to the diſſolution of government!

Whatſoever, gentlemen, makes the truth evident, although it be circumſtance, is legal evidence; and that which ſatisfies your conſcience, convinces your underſtanding, and induces you to believe the priſoner guilty, is good evidence in law. It may ſeem ſurprizing in another place that any pains ſhould be taken to make out what is

* Hawk. B. II. C. 47. Sect. 43.

is in itſelf ſo clear; but let miſtakes be ever ſo unreaſonable, 'tis proper to remove them. Other arguments upon this point might be drawn from the nature of tryals and other conſiderations, but as that may poſſibly anticipate what may be offered in reply to the defence which may be expected from the priſoner, I ſhall content myſelf with having premiſed thus much by way of preparation for evidence that is entirely circumſtantial.

I muſt appeal to you, gentlemen of the jury, whether you have not heard it aſſerted with equal confidence; that if the deceaſed met the priſoner on his challenge, and was fairly killed, the priſoner ought to be acquitted. That this is not the preſent caſe, but that the deceaſed was baſely murdered before he was prepared either to attack the other, or to defend himſelf, you will find, gentlemen, is to be violently preſumed from the circumſtances of his unloaded piſtol, his cloak and gloves being found upon him, and, above all, the ſituation of his wound, which the ſurgeons will prove to you, from it's entrance and it's direction, could not be received by a man in the poſture of defence.

To the aſſerters of this ſecond opinion, as irrational and almoſt as dangerous as the firſt; it will be in vain to prove the priſoner's guilt; if the imaginary notion of honour is to varniſh the crime, and diſappoint its puniſhment. For argument-ſake then, grant what is ſuppoſed, that the duel was fair, and ſee how reconcileable this opinion is to reaſon, or how juſtifiable by the laws. Alas! how is the name of honour proſtituted! can honour be the ſavage reſolution, the brutal fierceneſs, of a revengeful ſpirit? no, gentlemen, of the jury, ſearch your own boſoms, and there you'll find, that true honour is manifeſted in a ſteady uniform train of actions, attended by juſtice, and directed by prudence. Is this the conduct of the duelliſt? will juſtice ſupport the duelliſt (and in the preſent caſe, the priſoner, if he be found guilty) in robbing the community of an able and uſeful member, and in depriving the poor of a benefactor? will it ſupport him in preparing affliction for the widow's heart? in filling the orphan's eyes with tears, and in bringing ſorrow and misfortune on friends and a numerous train of dependants? will juſtice acquit him for enlarging the puniſhment beyond the offence? will it permit him for (perhaps) a raſh word that may admit of apology, an unadviſed action that may be retrieved, or an injury that may be compenſated, to cut off a man before his days be half numbered, and for a temporary fault, inflict an endleſs puniſhment? On the other hand, will prudence bear him out in riſking an infamous death if he ſucceeds in the duel? but if he falls, will it plead his pardon at a more awful tribunal, for ruſhing into the preſence of an offended God, with all his imperfections on his head? View the duelliſt in the light that either religion or the law conſiders him, and you'll quickly perceive and acknowledge the illegality, the impiety, of his ſpirit. Man, like the centinel fixed to his poſt, who dares not ſtir ſtill he is relieved; man, I ſay, muſt wait till death, natural death, the grand relief of human nature, ſhall diſcharge him; nor can he prodigally throw away a life beſtowed for better purpoſes. The giver, the preſerver, of life, muſt be diſpleaſed with him who uſurps a power to caſt away his own, or take away his fellow-creature's. Man is made in the expreſs image of his maker. Shall the duelliſt with impunity, in the perſon of his fellow-creature, deſtroy that image, in impious diſobedience to that command, which bids us not to kill?

The laws of his country too condemns the duelliſt. The ſages of the law, in their books will tell him, that perſons convicted barely of ſending a challenge, have been adjudged to pay * a large fine, and ſuffer impriſonment without bail, to make a publick acknowledgment of their offence, and to be bound to their good behaviour. That where perſons coolly and deliberately engage in a duel, which cannot but be attended with the apparent danger of murder, it is not only an open defiance of the laws, but carries with it a direct contempt of the juſtice of the nation, as putting men under the neceſſity of righting themſelves. That if two perſons in † cool blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder. And this the law adjudges to be of malice, and that the party cannot help himſelf by alledging that he was firſt ſtruck by the deceaſed; or that he had often declined to meet him, and was prevailed upon to do it by his importunity; or that it was only his intent to vindicate his reputation.

Who then after this will be hardy enough to acquit the criminal, whom the laws of God and man condemn? notwithſtanding the law declares that he affronts publick juſtice, who ſnatches the ſword from the magiſtrate's hand, and carves out his own revenge; yet, who ſo loud as the duelliſt, when he has ſecretly butcher'd ſome worthy man, in demanding juſtice and a fair tryal. Try me, ſays the priſoner, by the laws of my country, and I have nothing to fear. Aſtoniſhing preſumption! that he ſhould dare to hope for the protection of thoſe very laws, which he has juſt before diſobeyed and diſhonoured; that he ſhould inſult the wiſdom and juſtice of the laws of his country, and ruſh contemptuouſly into the duel that they forbid; and at the ſame time claim a ſhelter under the mercy of them, and demand open and poſitive evidence for a murder which he has contrived and committed in darkneſs! What! ſays the man of honour, forbid by laws divine on one hand, and reſtrained by human laws on the other, muſt I never draw my ſword, never ſhew my courage? yes, draw the one, and exert the other, in the cauſe of your country; employ them to guard your property from a robber, to defend your perſon from a ruffian, your bed from diſhonour, your daughter from violation, and to ſave your friend from aſſaſſins. Theſe are actions worthy of the man of honour.

Duelling ſeems to be an unnatural graft upon genuine courage, and the growth of a barbarous age. The polite nations of *Greece* and *Rome* knew nothing of it; they reſerved their bravery for the enemies of their country, and then were prodigal of their blood. Theſe brave people ſet

* 3 Inſt. † 3 Vol. Bac. abridg. 665, 666.

honour

honour up as a guardian genius of the republick, to humanize their paſſions, to preſerve their truth unblemiſhed, and to teach them to value life only as uſeful to their country. The modern heroes dreſs it up like one of the dæmons of ſuperſtition, beſmeared with blood, and delighting in human ſacrifice.

A man of honour, in the modern ſenſe, ſignifies no more, than an audacious man, who will fight at all events: a man, perhaps, who has been firſt indebted to your generoſity, by diſhoneſt artifices has abuſed your patience, and at laſt attempts your life for calling in your debt: a man, perhaps, who will wound your peace in ſtaining the honour of a wife or daughter, and afterwards, on your remonſtrating the wrong, heroically waſh away thoſe ſtains in the father's or husband's blood.

Senſeleſs as this notion of honour is, it unhappily has its advocates among us. But for the prevalence of ſuch a notion, how could the amiable perſon, whoſe death has made the ſolemn buſineſs of this day, be loſt to his country, his family and friends? Would to God that I was a maſter of words, and it could be indulged to the tenderneſs of a friend to pay a tribute to his memory! I might then endeavour to ſet him full before you in the variety of his excellence: but as this, perhaps, would be venturing too far, I can only lament that ſuch virtue had not a longer date: that this good man was cut off in the ſtrength of his age, e'er half his glaſs was run; when his large heart was projecting and executing ſchemes to relieve diſtreſs, and by the moſt ſurprizing acts of beneficence, vindicating the bounty of providence for heaping wealth upon him.

We ſhall now proceed to call our evidence.

The other gentlemen of council for the king, were Mr. *Wilſon*, and Mr. *Davis*.

Mr. *Peter Carew* ſworn.

Mr. Sol. Gen. Pray Mr. *Carew* was you at *Nevis* on the ſeventh of *November* laſt?

Carew. Yes, Sir, I was.

Mr. Sol. Gen. Was *Bridgwater*'s eſtate ſold that day?

Carew. Yes, Sir, it was.

Mr. Sol. Gen. Were you preſent at the ſale?

Carew. Yes, Sir.

Mr. Sol. Gen. Was the deceaſed there?

Carew. Yes.

Mr. Sol. Gen. Was the priſoner at the bar there?

Carew. Yes, he was.

Mr. Sol. Gen. Do you remember any converſation that paſt between the priſoner at the bar, and the deceaſed at the ſale?

Carew. As I went into the room where the eſtate was put up to ſale, I heard the priſoner ſay to the deceaſed, *he expected to be treated like a gentleman*, or, *he did not treat him like a gentleman*, or, words to that effect; which ſeemed to be in anſwer to ſomething the deceaſed had ſaid to him, but I did not hear what.

Mr. Sol. Gen. Do you know whether the priſoner and the deceaſed had any converſation after that?

Carew. I cannot tell whether they had or not.

Mr. Sol. Gen. Were they together at any time after?

Carew. I really do not know.

Priſ. Pray what was I doing at the time that, you ſay, I ſaid this to Mr. *Mills*?

Carew. I cannot tell what you were doing.

Priſ. Was any body in the room at that time?

Carew. Yes, a great many people.

Thomas Mills, eſquire, ſworn.

Mr. Sol. Gen. Pray, Sir, were you at *Nevis* when *Bridgewater*'s eſtate was laſt ſold?

Mills. Yes, Sir.

Mr. Sol. Gen. Were you preſent at the ſale?

Mills. Yes, Sir, it was on the ſeventh of *November* laſt.

Mr. Sol. Gen. Were the deceaſed and the priſoner at the bar there?

Mills. Yes, they were both there.

Mr. Sol. Gen. Do you remember any converſation that paſt between them at the ſale, and what it was?

Mills. I remember very well that Mr. *Cottle* the attorney was drawing the conditions of ſale, and after he had finiſhed them the priſoner objected to them, and the deceaſed ſaid, "*Mr.* "Barbot, *the conditions of ſale are very fair*; "*why will you cavil about them?*" Upon which the priſoner ſaid, "*Sir, I expect to be treated* "*like a gentleman*"; and the deceaſed replied, "*Sir, I ſhall always treat you and all mankind as* "*ſuch*".

Mr. Sol. Gen. Did you obſerve that the priſoner ſpoke with warmth?

Mills. Yes, he ſpoke very warmly.

Mr. Sol. Gen. Can you tell whether the deceaſed had any converſation with the priſoner at the bar, at any time after theſe words paſt?

Mills. I cannot tell whether they had or no, for I left them together in the auction-room.

Mr. Sol. Gen. Do you know whether the deceaſed ſaw the priſoner after the day of the ſale?

Mills. I cannot poſitively tell, but I have great reaſon to believe he did not ſee the priſoner 'till the morning he was killed; for after the ſale was over I went with the deceaſed to *Molton's-Bay*, and on the ninth, which was the ſecond day after the ſale, we went to *Saint Chriſtopher*'s together, and I ſaw him or heard from him every day after, 'till the nineteenth that he was killed.

Mr. Sol. Gen. Do you know whether the deceaſed gave the priſoner at the bar any provocation?

Mills. None to my knowledge.

Mr. Sol. Gen. Had he never any difference with him at all?

Mills. None, that I know of.

Mr. Sol. Gen. Had you ever any difference with the priſoner at the bar yourſelf?

Mills. Never any.

Mr. Sol. Gen. The priſoner is an attorney at law; did he ever do any buſineſs for you?

Mills. Yes, he has done buſineſs for me in his profeſſion.

Priſ. Yes, I have, and have always been very honeſtly paid for it.

Mr.

Mr. Sol. Gen. Do you know of any letters that paſſed between the priſoner and the deceaſed?

Mills. No, I do not know of any; I have heard ſince the murder that ſome letters did paſs between them.

Mr. Frye. Did you hear the priſoner ſay any thing to the deceaſed in a cavilling way, at the ſale of *Bridgewater*'s eſtate?

Mills. Yes, he cavilled at the conditions of ſale, and the deceaſed imagined he wanted to delay the ſale 'till ſun-ſet, in order to prevent the eſtate being ſold that day, and from his behaviour I imagined ſo to.

Priſ. You ſay I was cavilling; pray, were not the conditions of the ſale, that one third of the purchaſe-money ſhould be paid down immediately, and the other two thirds in a month, or elſe the firſt third to be forfeited? and do not you remember I ſaid, the court-act did not direct it ſhould be ſo, and that it was very hard to impoſe ſuch conditions againſt an act made to regulate ſales under executions?

Mills. I do not recollect that.

Priſ. Pray, was not the whole of my behaviour warm that day? Did I not ſay ſomething warmly to Mr. *Cottle?*

Mills. I do not remember that you did.

Mr. *Andrew Armour* ſworn.

Mr. Sol. Gen. Mr. *Armour*, do you recollect any converſation that paſt between you and the priſoner at the bar ſometime before you heard the report of the deceaſed being killed?

Armour. I remember ſometime in the beginning of *November* laſt the priſoner told me that Mr. *Mills* had treated him cruelly, and in ſuch a manner as ought never to be forgiven.

Mr. Sol. Gen. Pray, what time in *November* was it?

Armour. I am almoſt certain it was ſome time between the third and the ſeventh, but I am ſure it was before the ſeventh, for I went to *Montſerrat* on the ſeventh, and did not return to this iſland 'till after the murder.

Mr. Sol. Gen. Where was you when he ſaid this to you?

Armour. I was ſtanding at Mr. *Conſtantine*'s door.

Priſ. Pray Sir, was there any company preſent at that time?

Armour. No, there had been, but the company was juſt gone as I came to the door.

Priſ. Did I expreſs myſelf warmly?

Armour. No, I do not think you did.

Mr. Sol. Gen. Did not the priſoner tell you his reaſon for ſaying this? Did he not tell you in what manner Mr. *Mills* had behaved to him to occaſion his ſaying this of him?

Armour. No, he only ſaid generally, that Mr. *Mills* had treated him in ſuch a manner as ought never to be forgiven.

Priſ. Who was in company, do you ſay?

Armour. No body, the company was juſt gone as I came up.

Priſ. Had I any other converſation with you about Mr. *Mills?*

Armour. Not that I remember, I do not recollect any other than what I have already related.

Mr. Preſident. Did the priſoner ſay which *Mills* it was that ought never to be forgiven?

Armour. No Sir, he only ſaid Mr. *Mills.*

Mr. Preſident. Which *Mills* did you apprehend it to be?

Armour. I took it to be Mr. *Mathew Mills.*

Mr. Sol. Gen. Gentlemen, pray take notice of what Mr. *Armour* ſays. Did you, from the tenor of the diſcourſe between you, apprehend it to be Mr. *Mathew Mills* that the priſoner meant?

Armour. Yes, Sir, I did.

Mr. Juſtice Loſack. Pray, clear up this point—Mr. *Armour*, did you then know, or have you known ſince that, previous to this declaration of the priſoner to you, he had any difference or quarrel with Mr. *Thomas Mills*, or Mr. *William Mills?*

Armour. No, I never heard he had any difference with either.

Mr. J. Loſack. Did you know he was on good terms with both thoſe gentlemen?

Armour. I knew nothing to the contrary.

Priſ. I never had any difference with either of thoſe gentlemen.

Mr. J. Loſack. Pray, what reaſon had you to imagine it was the deceaſed that the priſoner meant?

Armour. Becauſe he mentioned Mr. *Mills* only, without any chriſtian name by way of diſtinction; I concluded from thence it was the deceaſed that he meant.

Patience Dorſet ſworn.

Mr. Sol. Gen. Mrs. *Dorſet*, do you know the priſoner at the bar?

Dorſet. Yes, Sir.

Mr. Sol. Gen. How long have you known him?

Dorſet. Above a twelvemonth.

Mr. Sol. Gen. Give the court and the jury an account of what you heard him ſay at any time before you heard the report of the deceaſed being killed.

Dorſet. Upon the king's birth-day Mrs. *M^c.Cabée* (the tavern-keeper's wife) ſent to deſire I would come and help her, for they were to provide an entertainment for the lieutenant-general and a great deal of company that day. Accordingly I went, and as I was going into the houſe, the priſoner was ſtanding under the gallery talking to two men, and as I was paſſing by, I heard him ſay, *there was a certain gentleman in this iſland, that within a fortnight he would either kill or be killed by.*

Mr. Sol. Gen. What time of the day was this?

Dorſet. Between eleven and twelve in the forenoon.

Mr. Sol. Gen. Did you hear any guns fire that day?

Dorſet. Yes, I heard a great many.

Mr. Sol. Gen. Do you know the perſons the priſoner was talking to?

Dorſet. No, I never ſaw them to my knowledge before nor ſince that time.

Prif. Are you ſure it was on the king's birth-day you heard me ſay thoſe words?

Dorſet. Yes, I am very ſure it was.

Mr. Frye. It is very well: we ſhall bring witneſſes to prove the priſoner was at *Nevis* on the king's birth-day.

Doctor *James Webbe* ſworn.

Mr. Horne. Doctor *Webbe*, do you know the priſoner at the bar?

Webbe. Before I anſwer any queſtions, I pray the court will favour me with a word. I am brought down from *Nevis* where I live, as an evidence on this tryal, and I deſire the protection of this court from any arreſts that may be iſſued againſt me. I am a ſtranger in this iſland, and it would be impoſſible for me, if I was arreſted, to find ſecurity. Another thing too, I am afraid of being aſſaſſinated.

Mr. Sol. Gen. This is not the country of aſſaſſins; they come from elſewhere.

Mr. Preſident. What reaſon have you to apprehend being aſſaſſinated?

Webbe. Sir, I have been told there is an intention to aſſaſſinate me.

Mr. Preſident. Who has told you ſo?

Webbe. I have heard it commonly reported, Sir.

Mr. Preſident. Can you fix the intention on any particular perſon?

Webbe. No, Sir, but I am afraid of Mr. *Mills*'s family in general, and I deſire Mr. *Colhoun* will give me ſecurity, that I may go in ſafety from Mr. *Mills*'s family to *Nevis*.

Mr. Colhoun. May it pleaſe your honours, if doctor *Webbe* will ſwear that he is in danger of his life from me, or from any part of Mr. *Mills*'s family, I am very willing to give him the ſecurity he aſks.

Mr. *Preſident.* Doctor *Webbe*, you hear what Mr. *Colhoun* offers; what ſay you to it?

Webbe. Sir, I cannot take upon me to ſwear any more than that I have heard there is an intention to aſſaſſinate me.

Mr. Preſident. It is very ſtrange you ſhould not know from whom you heard ſo!

Webbe. I did not hear it from any particular perſon: I have heard it commonly reported.

Mr. Preſident. Well then, unleſs you can charge ſome particular perſon, we can take no notice of it. Surely you would not have us bind over the whole iſland?

Webbe. Then, Sir, I deſire I may have my expences paid me ſince I have been down here.

Mr. Preſident. No, you cannot; for this is a proſecution at the ſuit of the crown, and in that caſe the witneſſes always bear their own charges. With reſpect to your being arreſted, the court will protect you from any arreſts during their ſitting. Mr. *Sollicitor*, go on with your evidence.

Mr. *Horne.* Do you know the priſoner at the bar?

Webbe. Yes.

Mr. Horne. How long have you known him?

Webbe. Between four and five years.

Mr. Horne. Did you not uſually conſult and adviſe with him in your affairs?

Webbe. I have employed him as an attorney.

Mr. Horne. Were you preſent when *Bridgwater*'s eſtate was ſold laſt at *Nevis*?

Webbe. Yes, I was.

Mr. Horne. Did not that eſtate belong to you, and was it not ſold for a debt of your's?

Webbe. Yes, it was my eſtate, and was ſold for a debt of mine.

Mr. Horne. When was it ſold?

Webbe. On the ſeventh of *November* laſt.

Mr. Horne. Were the priſoner at the bar and the deceaſed preſent at the ſale?

Webbe. Yes, they were.

Mr. Horne. Did not the provoſt marſhal make conditions of ſale?

Webbe. Yes, I believe there were terms of ſale?

Mr. Horne. Were thoſe conditions read before the eſtate was put up to ſale?

Webbe. I believe they were, but I am not certain.

Mr. Horne. What were the conditions, pray?

Webbe. I do not remember what they were.

Mr. Horne. Did the priſoner make any objections to them?

Webbe. I heard him ſay, *we will be bound by theſe conditions as far as the law can bind us and no farther; and that the marſhal had no right to make any terms of ſale.*

Mr. Horne. Did you hear him make no other objection? were there no other words paſt?

Webbe. No, only the deceaſed ſaid, "*we will* "*have no ſchool-boy's play.*

Mr. Horne. What anſwer did the priſoner make to that?

Webbe. I do not know, I did not hear any anſwer.

Mr. Horne. Why, were you not preſent all the time?

Webbe. No, I was backward and forward.

Mr. Horne. How near was you to the priſoner when he ſaid what you have related?

Webbe. About the diſtance of the room off.

Mr. Horne. And did you hear nothing elſe that paſt on the occaſion?

Webbe. No, Sir.

Mr. Horne. How came you ſo unconcerned as not to attend to what was going forward?

Webbe. I was ſo confuſed I could not mind any thing.

Mr. Horne. What was the cauſe of your confuſion?

Webbe. The eſtate being ſold.

Mr. Horne. Did the priſoner at your requeſt purchaſe that eſtate?

Webbe. Yes, he did purchaſe it at my requeſt.

Mr. Horne. One would imagine that as you were ſo nearly concerned in the purchaſe of the eſtate, you would have been more attentive to all that paſſed?

Webbe. I was walking backward and forward, and getting Mr. *Jacob Saunders* to ſign the bills for the purchaſe-money.

Mr. Horne. You ſay you were much confuſed, pray, did your confuſion proceed from concern or reſentment?

Webbe. From concern at having my eſtate ſold.

Mr. Horne. How long did the deceaſed ſtay at *Nevis* after the ſale?

Webbe. I do not know, I never ſaw him after.

Mr. Horne. Did the priſoner ſee him after the ſale?

Webbe. I do not know that he did.

Mr. Horne. Did the priſoner go home with you after the ſale?

Webbe. No.

Mr. Horne. When was the firſt time that you ſaw him after the ſale?

Webbe. I ſaw him the next day.

Mr. Horne. Do you not live in great intimacy with the priſoner?

Webbe. Yes, I am intimate with him.

Mr. Horne. Has he not confided in you often?

Webbe. Yes, he has.

Mr. Horne. The next day after the ſale that you ſaw the priſoner, did he not tell you the converſation that had paſſed between the deceaſed and him at the ſale?

Webbe. No.

Mr. Horne. Had you no converſation at all about the ſale?

Webbe. No, we only talked about the bills.

Mr. Horne. Did you ſee the priſoner the day after that? on the ninth?

Webbe. Yes.

Mr. Horne. What converſation had you with him then?

Webbe. I do not remember the converſation.

Juryman. Had you no converſation about the eſtate that day?

Webbe. I do not remember we had.

Juryman. It is very ſtrange, that you who was the purchaſer of the eſtate, ſhould not ſay ſomething of it to the priſoner who purchaſed it for you: or that you ſhould not remember what he ſaid to you about it!

Webbe. We had frequent converſations about the eſtate, but I do not remember the particulars of them.

Mr. Horne. Did you make no enquiry about the event of the ſale?

Webbe. No.

Mr. Horne. Did you never hear any complaint from the priſoner of his having been ill treated at the ſale?

Webbe. Not that I remember.

Mr. Horne. Try to recollect: I am ſure, Sir, your memory will ſerve you on this occaſion if you pleaſe. Did you never hear the priſoner mention any thing of ſatisfaction, or ill-treatment?

Webbe. Never.

Mr. Horne. Did you never hear him expreſs any diſſatisfaction at the conditions of ſale?

Webbe. I heard him ſay they were contrary to law.

Mr. Horne. Did he not complain of the hardſhip of them?

Webbe. I do not remember that he did.

Mr. Horne. Did you yourſelf complain of the conditions?

Webbe. I ſaid I thought them hard too, and I adviſed him not to ſign them.

Mr. Preſident. You ſaid in the beginning of your evidence, that you knew not what the conditions of ſale were, and now you ſay you adviſed the priſoner not to ſign them, becauſe you thought them hard; ſurely you muſt have known what the conditions were, or you could not have given him ſuch advice. This is ſtrangely inconnected indeed!

Webbe. I adviſed him not to ſign any conditions at all.

Mr. Horne. Do you know whether the priſoner went to *Saint Chriſtopher*'s after the ſale of the eſtate?

Webbe. I do not know that he did.

Mr. Horne. Pray, are not you a guardian to Mrs. *Daſent*'s daughter?

Webbe. Yes.

Mr. Horne. Did not Mrs. *Daſent* apply to you, and tell you ſhe thought it improper for the priſoner to ſtay at her houſe, and did not ſhe deſire you to ſpeak to the priſoner not to continue there?

Webbe. Yes, ſhe did apply to me, and I did deſire the priſoner to leave her houſe, and to come to mine.

Mr. Horne. And did he go to your houſe?

Webbe. Yes.

Mr. Horne. When did he go there?

Webbe. He came to my houſe on the ſixteenth of *November* at night.

Mr. Horne. How long did he ſtay there?

Webbe. He ſtayed there all the next day.

Mr. Horne. Did he never ſay any thing to you on the ſubject of the diſpute that had happened at the ſale of *Bridgwater*'s eſtate?

Webbe. No, he never did.

Mr. Horne. Do not you know, or did not you hear the priſoner ſay, he had hired a canoo from *John Cribbe* to carry him down to *Saint Chriſtopher*'s?

Webbe. No, I never heard him ſay ſo, nor I do not know that he did.

Mr. Horne. Where was the priſoner on the eighteenth of *November*?

Webbe. On the eighteenth we went to Mr. *Jacob Saunders*'s, where we dined.

Mr. Horne. Did not you and the priſoner execute a bond of indemnity to Mr. *Jacob Saunders* that day?

Webbe. Yes, we executed a bond to indemnify him for endorſing the bills for the purchaſe-money of the eſtate.

Mr. Horne. Do you know whether the priſoner ſent any letters to *Saint Chriſtopher*'s on the eighteenth?

Webbe. He told me he had wrote to doctor *William Mills*, about Mr. *Symonds*'s affair.

Mr. Horne. Did the priſoner receive any letters from *Saint Chriſtopher*'s that day?

Webbe. While we were at Mr. *Saunders*'s, the priſoner's negro-boy brought him a packet from *Saint Chriſtopher*'s, and the priſoner ſhewed me a letter he had received from doctor *William Mills*.

Mr. Horne. Did he ſhew you no other letter?

Webbe. No.

Mr. Horne. Nor tell you he had received any letter from the deceaſed?

Webbe. No.

Mr.

Mr. Horne. Did nothing more paſs while you were at *Saunders*'s, than what you have already related?

Webbe. Nothing more that I remember.

Mr. Horne. Were you not at *O Donnell*'s tavern with the priſoner, the night before the murder?

Webbe. Yes, we were that evening at *O Donnell*'s.

Mr. Horne. Did not you know the priſoner intended to execute ſome paper, or writing, that evening?

Webbe. No, I did not.

Mr. Horne. Did not you ſee the priſoner that evening writing of a paper at *O Donnell*'s?

Webbe. Yes, I ſaw him writing at a ſide-table.

Mr. Horne. What was it he was then writing?

Webbe. I do not know.

Mr. Horne. Do not you know he was then making his will?

Webbe. No, I do not know whether it was a will, or what it was.

Mr. Horne. Did not the priſoner deſire you to procure three witneſſes to atteſt that paper, and did not you deſire one *Springett* not to be out of the way that evening?

Webbe. Yes, I believe he did deſire me, and I did ſpeak to *Springett* not to be out of the way.

Mr. Horne. Did not you look over the priſoner while he was writing?

Webbe. No.

Mr. Horne. Nor did not you read what he was writing?

Webbe. No.

Mr. Horne. Nor after he had finiſhed it?

Webbe. No.

Mr. Horne. You read no part of it at all?

Webbe. No.

Mr. Horne. Was you in the room all the time the priſoner was writing?

Webbe. No, I was in and out.

Mr. Horne. Did not the priſoner call you frequently while he was writing?

Webbe. Yes.

Mr. Horne. What did he ſay to you at thoſe times?

Webbe. I remember nothing but his asking me if I had got the witneſſes ready?

Mr. Horne. Did not he whiſper to you?

Webbe. No.

Mr. Horne. Did he ſay nothing elſe to you?

Webbe. No, he only asked me if the witneſſes were come?

Mr. Horne. Do you know the contents of the paper the priſoner was writing?

Webbe. No.

Mr. Horne. Did not he ſhew it you while he was writing it?

Webbe. No.

Mr. Horne. Who were the witneſſes to it?

Webbe. Mr. *O Donnell*, Mr. *Potts*, and Mr. *Springett*.

Mr. Horne. Did the priſoner execute it in their preſence?

Webbe. Yes.

Mr. Horne. Did not you know, or had not you great reaſon to believe, it was his will?

Webbe. I do not know it was his will: it might have been his will, or a power of attorney; for I heard him ſay he would either make a will, or give a power of attorney to ſecure Mr. *Jacob Saunders* for indorſing his bills.

Mr. Horne. How could a will or a power of attorney ſecure Mr. *Saunders?* Beſides, what neceſſity was there for either, when the priſoner had that very day joined you in a bond of indemnity to Mr. *Saunders?*

Webbe. I do not know, but he ſaid he would do ſo.

Mr. Horne. Did not the priſoner tell you he had made you a legatee in his will?

Webbe. No, he did not.

Mr. Horne. What did the priſoner do with that paper when he had executed it?

Webbe. He gave it to me.

Mr. Horne. Did you look into it at the time he gave it to you?

Webbe. No.

Mr. Horne. Was it ſealed or open when he gave it to you?

Webbe. It was folded up, but not ſealed.

Mr. Horne. When the priſoner delivered it to you, did he pronounce any words?

Webbe. None that I heard.

Mr. Horne. In whoſe cuſtody is that paper now?

Webbe. In mine, it is at *Nevis*.

Mr. Horne. Was it indorſed?

Webbe. No.

Mr. Horne. Was it ever recorded?

Webbe. No.

Mr. Horne. What did you really take it to be?

Webbe. I thought it was a power of attorney to ſecure *Jacob Saunders*.

Mr. Horne. Did you never read it, nor look into it at all?

Webbe. No, I never did.

Mr. J. Loſack. It is very ſtrange you ſhould not have the leaſt curioſity to look into a paper, that, by your own confeſſion, was ſo relative to your own concerns! But, upon the oath you have taken, did the priſoner ſay any thing to you, and what, at the time he delivered into your hands the paper we are now upon, at the tavern?

Webbe. No, he ſaid nothing at all to me.

Mr. J. Loſack. Did he not tell you it was his will?

Webbe. No.

Mr. J. Loſack. Upon your oath, doctor *Webbe*, did he not inform you it was his will, and that you were a legatee in it?

Webbe. No, he did not.

Mr. J. Loſack. Is doctor *Webbe*'s examination, which was taken at *Nevis*, in court?

Cl. of Arr. Yes, Sir.

Mr. J. Loſack. Pleaſe to hand it up here.

Mr. Horne. I pray that judge *Herbert* may be called, and the examination read; for this gentleman has now contradicted what he poſitively ſwore to before judge *Herbert*.

Joſeph Herbert, eſquire, ſworn.

Mr. Horne. Judge *Herbert*, is not that the hand-writing of doctor *Webbe* ſubſcribed to that examination, and was not that examination ſworn to and ſubſcribed by doctor *Webbe* before you?

Mr.

Mr. Herbert. Yes, this examination was ſubſcribed by doctor *Webbe*, and ſworn to before me, and that is my hand to the *jurat*.

Mr. Horne. Was not the examination read by doctor *Webbe*, or read to him before he ſwore to it?

Mr. Herbert. Yes, the examination was by my deſire written by Mr. *Cottle* the attorney, and taken from doctor *Webbe*'s own lips, and afterwards read by Mr. *Cottle* to doctor *Webbe* before he ſwore to it, or before the *doctor* had ſigned it, and he read it himſelf alſo.

Mr. Preſident. Mr. *Smith*, read doctor *Webbe*'s examination.

Cl. of Arr. Nevis, *Before the honourable* Joſeph Herbert, *eſquire, chief juſtice of his majeſty's court of King's-Bench and Common-Pleas, in the iſland of* Nevis, *and* Samuel Clarke, *and* Sommers Payne, *eſquires, juſtices of the ſame bench.*

The examination of James Webbe, *of the ſaid iſland, ſurgeon, who being ſworn on the holy evangeliſts of almighty God, depoſeth and ſaith,*

THAT on *Thurſday* the ſixteenth day of this *inſtant*, deponent going to his houſe, found *John Barbot* there.

That it was ſome time in the evening after candle-light, when he ſo returned home, but deponent knoweth not the time preciſely, or any particular hour near it.

That ſaid *John Barbot* continued at this deponent's with deponent till the *Saturday* following, when they dined at Mr. *Jacob Saunders*'s, and ſtaid there till about five in the evening, when *Barbot* and deponent both went away from thence to Mr. *Edward Paris*'s, where they made a ſtay of about half an hour, and thence came to *Charles-Town* to Mr. *O Donnell*'s tavern, where they ſtaid about an hour, and then went directly home to deponent's houſe, where they arrived about nine o'clock, as deponent believes.

That the ſaid *Barbot*, ſoon after his coming to deponent's houſe, declared he was ſleepy, and wiſhed deponent a good night, and went to bed, as deponent believes; that deponent being troubled with a lax, got up in the night to go to the neceſſary houſe, and on paſſing through the hall for that purpoſe, ſaid *Barbot* called to deponent, and asked him what was the matter? to which deponent replied, nothing had happened, or was the matter: ſaid *Barbot* then asked what it was o'clock? deponent told him he believed it was about one: no other converſation then paſſed. Deponent did not ſee or hear ſaid *Barbot* 'till the next morning *Sunday* the nineteenth *inſtant*, when ſaid *Barbot* came to deponent's houſe on horſeback, upon one of deponent's own horſes, between eight and nine o'clock, attended by a boy ſlave called *Nero*.

Barbot continued with deponent till they both ſet out for *Gingerland* pariſh, in order to dine abroad; and deponent parted with ſaid *Barbot* at Mr. *Pemberton*'s negro-houſes, when ſaid *Barbot* took leave of deponent, who told him he was going to dine at deponent's uncle *George Webbe*'s. That deponent then went and dined at Mr. *Maynard*'s, from thence he went with Mr. *Maynard* to captain *Symmonds*'s, but whilſt he was at Mr. *Maynard*'s, a negro man came to enquire for deponent, and asked deponent, who was then by himſelf in a back room upon a bed, if he knew where Mr. *Barbot* was; deponent told him he was at *Stony-hill*; the negro then went out, and ſoon afterwards returned, and told deponent; that there were people come from *Saint Chriſtopher*'s after Mr. *Barbot*, for killing Mr. *Mills*, or the gentleman upon *Toby Wall*'s eſtate; but deponent does not particularly remember which. The boy told no other white perſon in the family. About half an hour after deponent's hearing this account from the boy, deponent and Mr. *Maynard* ſet out for captain *Symmonds*'s as aforeſaid, where he received a note from ſaid *Barbot*, deſiring him, upon the receipt thereof, to come to the ſaid *Barbot* directly at Mr. *John Herbert*'s; upon which deponent went to him immediately, and found him drinking tea. *Barbot* ſoon afterwards told deponent he wanted to ſpeak with him, and they both went out together into the neceſſary houſe. *Barbot* there asked deponent if he had heard any thing of the killing Mr. *Mills*, the deponent told him yes, he had heard it at captain *Symmonds*'s, who read a letter which had been received from *Saint Kitts* about it, and that he (captain *Symmonds*) was gone after him (*Barbot*) to take him. *Barbot* replied, he did not care, he ſhould not go out of the way, for he knew nothing of the matter. This was the purport of all the converſation which paſſed between deponent and *Barbot* in the neceſſary houſe, 'till the conſtables appeared to take him. That deponent never heard, ſaw, knew, or was informed of any letters or meſſages that paſſed between the ſaid *Barbot* and the deceaſed Mr. *Mills*. That deponent and ſaid *Barbot* were one day at the widow of *James Daſent*'s houſe upon *Saddle-hill*, when ſhe was from home, when deponent took up a caſe of piſtols that were lying in the houſe, and ſaid he would try whether he could ſhoot with them, and asked the ſaid *Barbot* if he would go; and they accordingly went out and fired ſeveral ſhot together at the head of a barrel. That deponent believes it was about the time Mrs. *Hickman* was ſick, and that deponent believes Mrs. *Daſent* was then gone to viſit her.

That on the *Saturday* evening when the ſaid *Barbot* came to Mr. *O Donnell*'s tavern as aforeſaid, he made his will; that the ſaid *O Donnell*, and *Charles Potts*, and *John Springett*, both in the deponent's ſervice, were witneſſes to the ſame; the will was delivered to the deponent that ſame night; that ſaid *Barbot* informed deponent he was a legatee. That the road deponent and *Barbot* went that ſaid *Saturday* night to deponent's houſe, was through *Willet*'s eſtate. That ſaid *Barbot* was writing at Mr. *O Donnell*'s houſe that ſame *Saturday* night, and deponent believes it was his will. That deponent was preſent when the ſaid *Barbot*'s will was executed, and does not recollect any converſation that paſſed between the ſaid *O Donnell* and *Barbot* on that occaſion, nor, that upon the ſaid *O Donnell*'s ſaying to ſaid *Barbot*, that this (meaning the executing the ſaid will) looked like a military ſettlement of a man's affairs, he this deponent ſaid *huſh* to the ſaid *O Donnell*, or made uſe of any

Mr. Horne. Did nothing more paſs while you were at *Saunders*'s, than what you have already related?

Webbe. Nothing more that I remember.

Mr. Horne. Were you not at *O Donnell*'s tavern with the priſoner, the night before the murder?

Webbe. Yes, we were that evening at *O Donnell*'s.

Mr. Horne. Did not you know the priſoner intended to execute ſome paper, or writing, that evening?

Webbe. No, I did not.

Mr. Horne. Did not you ſee the priſoner that evening writing of a paper at *O Donnell*'s?

Webbe. Yes, I ſaw him writing at a ſide-table.

Mr. Horne. What was it he was then writing?

Webbe. I do not know.

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Webbe. Yes, I believe he did deſire me, and I did ſpeak to *Springett* not to be out of the way.

Mr. Horne. Did not you look over the priſoner while he was writing?

Webbe. No.

Mr. Horne. Nor did not you read what he was writing?

Webbe. No.

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Webbe. No.

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Webbe. Mr. *O Donnell*, Mr. *Potts*, and Mr. *Springett*.

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Mr. Preſident. Mr. *Smith*, read doctor *Webbe*'s examination.

Cl. of Arr. Nevis, *Before the honourable* Joſeph Herbert, *eſquire, chief juſtice of his majeſty's court of King's-Bench and Common-Pleas, in the iſland of* Nevis, *and* Samuel Clarke, *and* Sommers Payne, *eſquires, juſtices of the ſame bench.*

The examination of James Webbe, *of the ſaid iſland, ſurgeon, who being ſworn on the holy evangeliſts of almighty God, depoſeth and ſaith,*

THAT on *Thurſday* the ſixteenth day of this *inſtant*, deponent going to his houſe, found *John Barbot* there.

That it was ſome time in the evening after candle-light, when he ſo returned home, but deponent knoweth not the time preciſely, or any particular hour near it.

That ſaid *John Barbot* continued at this deponent's with deponent till the *Saturday* following, when they dined at Mr. *Jacob Saunders*'s, and ſtaid there till about five in the evening, when *Barbot* and deponent both went away from thence to Mr. *Edward Paris*'s, where they made a ſtay of about half an hour, and thence came to *Charles-Town* to Mr. *O Donnell*'s tavern, where they ſtaid about an hour, and then went directly home to deponent's houſe, where they arrived about nine o'clock, as deponent believes.

That the ſaid *Barbot*, ſoon after his coming to deponent's houſe, declared he was ſleepy, and wiſhed deponent a good night, and went to bed, as deponent believes; that deponent being troubled with a lax, got up in the night to go to the neceſſary houſe, and on paſſing through the hall for that purpoſe, ſaid *Barbot* called to deponent, and asked him what was the matter? to which deponent replied, nothing had happened, or was the matter: ſaid *Barbot* then asked what it was o'clock? deponent told him he believed it was about one: no other converſation then paſſed. Deponent did not ſee or hear ſaid *Barbot* 'till the next morning *Sunday* the nineteenth *inſtant*, when ſaid *Barbot* came to deponent's houſe on horſeback, upon one of deponent's own horſes, between eight and nine o'clock, attended by a boy ſlave called *Nero*.

Barbot continued with deponent till they both ſet out for *Gingerland* pariſh, in order to dine abroad; and deponent parted with ſaid *Barbot* at Mr. *Pemberton*'s negro-houſes, when ſaid *Barbot* took leave of deponent, who told him he was going to dine at deponent's uncle *George Webbe*'s. That deponent then went and dined at Mr. *Maynard*'s, from thence he went with Mr. *Maynard* to captain *Symmonds*'s, but whilſt he was at Mr. *Maynard*'s, a negro man came to enquire for deponent, and asked deponent, who was then by himſelf in a back room upon a bed, if he knew where Mr. *Barbot* was; deponent told him he was at *Stony-hill*; the negro then went out, and ſoon afterwards returned, and told deponent; that there were people come from *Saint Chriſtopher*'s after Mr. *Barbot*, for killing Mr. *Mills*, or the gentleman upon *Toby Wall*'s eſtate; but deponent does not particularly remember which. The boy told no other white perſon in the family. About half an hour after deponent's hearing this account from the boy, deponent and Mr. *Maynard* ſet out for captain *Symmonds*'s as aforeſaid, where he received a note from ſaid *Barbot*, deſiring him, upon the receipt thereof, to come to the ſaid *Barbot* directly at Mr. *John Herbert*'s; upon which deponent went to him immediately, and found him drinking tea. *Barbot* ſoon afterwards told deponent he wanted to ſpeak with him, and they both went out together into the neceſſary houſe. *Barbot* there asked deponent if he had heard any thing of the killing Mr. *Mills*; the deponent told him yes, he had heard it at captain *Symmonds*'s, who read a letter which had been received from *Saint Kitts* about it, and that he (captain *Symmonds*) was gone after him (*Barbot*) to take him. *Barbot* replied, he did not care, he ſhould not go out of the way, for he knew nothing of the matter. This was the purport of all the converſation which paſſed between deponent and *Barbot* in the neceſſary houſe, 'till the conſtables appeared to take him. That deponent never heard, ſaw, knew, or was informed of any letters or meſſages that paſſed between the ſaid *Barbot* and the deceaſed Mr. *Mills*. That deponent and ſaid *Barbot* were one day at the widow of *James Daſent*'s houſe upon *Saddle-hill*, when ſhe was from home, when deponent took up a caſe of piſtols that were lying in the houſe, and ſaid he would try whether he could ſhoot with them, and asked the ſaid *Barbot* if he would go; and they accordingly went out and fired ſeveral ſhot together at the head of a barrel. That deponent believes it was about the time Mrs. *Hickman* was ſick, and that deponent believes Mrs. *Daſent* was then gone to viſit her.

That on the *Saturday* evening when the ſaid *Barbot* came to Mr. *O Donnell*'s tavern as aforeſaid, he made his will; that the ſaid *O Donnell*, and *Charles Potts*, and *John Springett*, both in the deponent's ſervice, were witneſſes to the ſame; the will was delivered to the deponent that ſame night; that ſaid *Barbot* informed deponent he was a legatee. That the road deponent and *Barbot* went that ſaid *Saturday* night to deponent's houſe, was through *Willet*'s eſtate. That ſaid *Barbot* was writing at Mr. *O Donnell*'s houſe that ſame *Saturday* night, and deponent believes it was his will. That deponent was preſent when the ſaid *Barbot*'s will was executed, and does not recollect any converſation that paſſed between the ſaid *O Donnell* and *Barbot* on that occaſion, nor, that upon the ſaid *O Donnell*'s ſaying to ſaid *Barbot*, that this (meaning the executing the ſaid will) looked like a military ſettlement of a man's affairs, he this deponent ſaid *huſh* to the ſaid *O Donnell*, or made uſe of any

other means to desire the said *O Donnell* to keep silence.

James Webbe.

Sworn this 22d day of November, 1752, *before*
Joseph Herbert.
Samuel Clarke.
Sommers Payne.

Webbe. I do not remember when I read the the examination, that any thing was in it about making me a legatee. I read it in a hurry.

Mr. Horne. Did the prisoner give you any reason for making his will so suddenly?

Webbe. I do not remember it was his will; he had talked of going to *England*, and said he would make his will.

Mr. J. Losack. Doctor *Webbe*, pray raise your voice, the court does not hear you; and considering how much your evidence seems calculated for the advantage of the prisoner, it is pity he should lose any part of the benefit of it. Did you ever receive any letters from the deceased?

Webbe. Yes, I have received a note or two from him.

Mr. J. Losack. Then you know his hand?

Webbe. Yes, I believe I should if I was to see it.

Mr. J. Losack. Did you never see his handwriting in any letters to the prisoner?

Webbe. No.

Mr. J. Losack. Nor on the superscription of any letter to the prisoner?

Webbe. No, I never did.

Mr. Horne. At what o'clock did you leave *O Donnell*'s tavern, the evening the prisoner executed the paper he delivered to you?

Webbe. Between seven and eight in the evening.

Mr. Horne. Where did you go to?

Webbe. We went home.

Mr. Horne. Did the prisoner go home with you?

Webbe. Yes.

Mr. Horne. Had you no conversation with the prisoner relative to the deceased, in your way home, or after you got home?

Webbe. I do not remember any.

Mr. J. Losack. Had you positively no conversation relative to the deceased?

Webbe. I do not remember we had.

Mr. J. Losack. Pray, Doctor *Webbe*, do you remember on what day you came last from *Nevis?*

Webbe. From *Nevis*, Sir?

Mr. J. Losack. Yes, from *Nevis?*

Webbe. I came from *Nevis* the day before yesterday.

Mr. J. Losack. It is very well, Sir; I only wanted to know whether you had remembrance of any thing.

Mr. Horne. Did the prisoner never tell you of any letter he had received from the deceased?

Webbe. No.

Mr. Horne. Nor any verbal message?

Webbe. No.

Mr. Horne. Did he mention to you any intention he had of going out that night you came from *O Donnell*'s?

Webbe. No.

Mr. Horne. Pray what was the conversation you had together, after you got home?

Webbe. I do not recollect what it was, but we had very little conversation together, for we were reading.

Mr. Horne. How long were you reading?

Webbe. I cannot tell exactly, I believe it was about an hour.

Mr. Horne. What book were you reading?

Webbe. James's dictionary.

Mr. Horne. At what time did the prisoner go to bed?

Webbe. At about nine o'clock.

Mr. Horne, Did you see him that night after he went to bed?

Webbe. No, I did not see him till the next morning; but I was up at about one o'clock in the morning, and heard him.

Mr. Horne. How came you up at that hour?

Webbe. I had a lax, and was going to the necessary house, and as I was passing through the hall, the prisoner called to me, and asked me what o'clock it was, and I told him it was about one?

Mr. Horne. You say you saw the prisoner the next morning, was he on foot, or on horseback when you saw him?

Webbe. He was on horseback, riding up to the house.

Mr. Horne. Whose horse was he on?

Webbe. On my horse.

Mr. Horne. Had he any negro with him?

Webbe. Yes, he had my boy.

Mr. Horne. What is the boy's name?

Webbe. Pope.

Mr. Horne. Pray, at what time do you generally rise in the morning?

Webbe. Between seven and eight generally.

Mr. Horne. At what time does the prisoner usually rise?

Webbe. He commonly rises later than that.

Mr. J. Losack. Did you miss any of your horses that morning, before the prisoner came to your house?

Webbe. No, Sir.

Mr. J. Losack. How many horses do you keep?

Webbe. I keep four, Sir.

Mr. J. Losack. When you get up in a morning, do you not usually go to your stable to see to your horses?

Webbe. No, I very seldom do.

Mr. J. Losack. Did not you visit your stable that morning, on the nineteenth of *November?*

Webbe. No, Sir.

Mr. President. Pray, when the prisoner came to your house that morning, had he any pistols?

Webbe. No, he had none.

Mr. President. Was his coat wet?

Webbe. I cannot tell.

Mr. President. Were any of his cloaths wet?

Webbe. I do not know, I did not take notice that they were.

Mr. J. Losack. Had you any conversation with the prisoner when he came into your house?

Webbe. Yes.

Mr. J. Losack. What was it?

Webbe.

Webbe. He aſked me whether I had breakfaſted, I ſaid I believed not.

Mr. J. Loſack. Why, could not you tell whether you had breakfaſted or not?

Webbe. I meant that I believe breakfaſt was not over; for I ſeldom do breakfaſt myſelf.

Mr. J. Loſack. Did you not aſk the priſoner where he had been?

Webbe. No.

Mr. Horne. Did you not ask him why he took your horſe and boy without your leave?

Webbe. No, for he was always welcome to my horſe and boy too, he had my leave to take them whenever he wanted them, and he had frequently taken them without firſt acquainting me of it.

Mr. Horne. Where did you imagine the priſoner had been?

Webbe. I had no ſuſpicion of where he had been; I thought he had been wenching.

Mr. Horne. Did the priſoner ſay nothing to you about one *Peter Rowland*, a chriſtian-ſlave?

Webbe. No.

Mr. Horne. Did he never tell you he had beſpoke a canoo of *that Peter Rowland?*

Webbe. No.

Mr. Horne. Did he ſay nothing to you about a canoo?

Webbe. Nothing at all.

Mr. Horne. Did he not tell you he was to give a dollar to each of the oars-men?

Webbe. No, he did not.

Mr. Horne. How does the priſoner carry his things generally when he travels?

Webbe. His boy generally carries them.

Mr. Horne. What is his boy's name?

Webbe. Nero.

Mr. Horne. Do you know whether the priſoner has a trunk?

Webbe. Yes, he has.

Mr. Horne. What colour is it of?

Webbe. It is a red trunk.

Mr. Horne. Where did you ſee the trunk laſt?

Webbe. The laſt time I ſaw it was at Mrs. *Daſent*'s.

Mr. Horne. Does he generally carry his things in that trunk when he travels?

Webbe. He generally carries them in a red trunk, I cannot tell whether it is the ſame I ſaw at Mrs. *Daſent*'s.

Mr. Preſident. When the priſoner came to your houſe from Mrs. *Daſent*'s on the ſixteenth of *November*, had he a trunk with him?

Webbe. Yes, I believe he had.

Mr. Preſident. Was the priſoner's boy *Nero* at your houſe on the eighteenth of *November* at night?

Webbe. No, I did not ſee him there.

M. Preſident. Did you ſee him on the nineteenth in the morning?

Webbe. Yes.

Mr. Preſident. Had he the trunk with him then?

Webbe. Yes, I ſaw him with the trunk coming up to the houſe.

Mr. Preſident. Was it before the priſoner came to your houſe?

Webbe. It was about the ſame time.

Mr. Horne. Did you not ſee the trunk opened; or did you not ſee the priſoner, or his boy, take any piſtols out of it?

Webbe. No, I did not ſee it opened, nor I did not ſee the priſoner, or his boy, take any piſtols out of it.

Mr. Horne. What cloaths had the priſoner on when he came to your houſe that morning, on the nineteenth of *November?*

Webbe. He had on a *whitiſh coat and a ſilver laced hat.*

Mr. Horne. What waiſtcoat had he on?

Webbe. A dark coloured waiſtcoat, I think.

Mr. Horne. Did the priſoner ſhift his cloaths as ſoon as he came in?

Webbe. Yes.

Mr. Horne. Where did he ſhift them?

Webbe. In one of the rooms of the houſe, I cannot tell which.

Mr. Horne. Did you ever ſee the priſoner fire at a mark with a piſtol?

Webbe. Yes.

Mr. Horne. Where was it?

Webbe. At Mrs. *Daſent*'s at *Saddle-hill.*

Mr. Horne. On what occaſion?

Webbe. He fired at my requeſt.

Mr. Horne. What was your reaſon for deſiring him to fire the piſtols?

Webbe. No particular reaſon, we were talking about Mr. *Daſent*'s fighting *Peterſon* with thoſe piſtols.

Mr. Horne. What kind of piſtols were they the priſoner fired out of?

Webbe. They were ſilver mounted and braſs barrels.

Mr. Horne. How often did he fire out of them?

Webbe. But that once.

Mr. Horne. I mean, how many times did the priſoner fire out of the piſtols that day?

Webbe. A good many times.

Mr. Horne. What mark did he fire at?

Webbe. At a barrel-head.

Mr. Horne. On what day was it?

Webbe. The *Sunday* before the deceaſed was killed.

Mr. Horne. Who did the piſtols belong to?

Webbe. They were a pair of *James Daſent*'s.

Mr. Horne. Are theſe the piſtols? (*a pair of piſtols ſhewn him.*)

Webbe. I believe they are.

Mr. Horne. When you were exerciſing the piſtols, had you any converſation with the priſoner about the deceaſed?

Webbe. No.

Mr. Horne. What became of the piſtols when you had done exerciſing them?

Webbe. I ordered one of Mrs. *Daſent*'s boys to clean them.

Mr. Horne. Where were the piſtols generally kept at Mrs. *Daſent*'s?

Webbe. There was no fixt place for them: ſometimes they were kept in the ſhop, and ſometimes in the judge's room on a beam.

Mr. Horne. When did you hear that Mrs. *Daſent* miſſed the piſtols?

Webbe. On *Monday*, the day after I heard the report of the deceaſed being killed, Mrs.

Daſent

Daſent ſent to me to deſire I would go to her: I went to her accordingly, and ſhe told me ſhe miſſed a pair of piſtols, and had been looking for them, but could not find them. She ſeemed frightened, and asked me if I knew where they were? I ſaid I did not, but I would help her to look for them; and I went into the ſhop, and ſearched there, but could not find them; from thence I went with her into the judge's room, and I ſaid let us look under the bed, and I ſat upon the bed, and took up the baſe, and found the piſtols under the bed.

Mr. Horne. Why, did you know where they were that you ſo readily found them?

Webbe. No, I did not know where they were.

Mr. Horne. Were they not in holſter caps?

Webbe. Yes, lying on a box upon the floor: the caps were mouldy.

Mr Horne. Do you, or do you not know that the piſtols were placed there by the priſoner or his boy?

Webbe. I did not know they were in that place, nor do I know who put them there.

Mr. Horne. Did the piſtols appear to have been lately made uſe of?

Webbe. I cannot tell, I did not examine them.

Mr. Horne. Were they the ſame piſtols the priſoner fired at the mark with.

Webbe. I believe they were.

Mr. Horne Did the priſoner ever make uſe of them after he fired at the mark with them?

Webbe. Not to my knowledge.

Mr Horne. Did he ever borrow any piſtols of you?

Webbe. No, he never did.

Mr. Horne Had he any piſtols of his own?

Webbe. He had none that I know of.

Mr Horne. Did he not uſually ride with piſtols?

Webbe. No.

Mr. Horne. Do you not know, or have you not great reaſon to believe, the priſoner had thoſe piſtols with him the morning the murder was committed?

Webbe. I do not know whether he had them or not.

Mr. Horne. Did not the priſoner's boy carry the piſtols to Mrs. *Daſent*'s, the morning the murder was committed?

Webbe. I do not know that he did.

Mr Horne. Did not you and the priſoner uſually lie in the room where the piſtols were found?

Webbe. We have lain there ſometimes.

Mr. Horne Did you obſerve the furniture of the room the day you found the piſtols?

Webbe. No, I did not take notice of it.

Mr. Horne. Was there a red trunk in it?

Webbe. Yes, there was a red trunk.

Mr. Horne. Did it belong to the priſoner?

Webbe. Yes, I believe it did.

Mr. Horne. Was it the ſame that *Nero* brought to your houſe the morning before?

Webbe. Yes, I believe it was.

Mr. Horne. Did not the priſoner aſk you, the night before you heard the deceaſed was killed, to lend him your horſe or your boy *Pope*?

Webbe. No.

Mr. Horne. Nor had you no ſuſpicion of his going out that night?

Webbe. None at all, nor I did not know where he had been 'till the next morning, that *Pope* told me he had been at *Molton's-Bay.*

Mr. Horne. Did not you miſs *Pope* that night?

Webbe. No, I did not miſs him 'till I ſaw him in the morning coming up with the priſoner.

Mr. Horne. Where did you dine on *Sunday* the nineteenth of *November?* and where did the priſoner dine that day?

Webbe. The priſoner dined at my uncle *Webbe*'s at *Stony-hill*, and I dined at Mr. *Maynard*'s.

Mr. Horne. Did the priſoner ſtay at your houſe all that morning, from the time you ſaw him alight, 'till he went to your uncle's to dinner?

Webbe. Yes, he did, and I rode with him to the turning off at Mr. *Ottley*'s, where we parted; I went to Mr. *Maynard*'s, and he went to my uncle's.

Mr. Horne. Had you no converſation with the priſoner about the deceaſed then? Did he not tell you of his having killed the deceaſed, or having fought a duel with him that morning?

Webbe. No, he did not ſay a word about the matter.

Mr. Horne. Did not you hear of the murder while you were at Mr. *Maynard*'s?

Webbe. Yes.

Mr. Horne. By what means did you hear it?

Webbe. A negro came to me and told me, that Mr. *Barbot* had killed Mr. *Mills.*

Mr. Horne. Whoſe negro told you this, and who ſent him to tell you; did not you enquire?

Webbe. I do not know whoſe negro it was: I did not enquire, and do not know who ſent him.

Mr. Horne. This is extremely odd, that a negro ſhould come and tell you this news, and you not enquire whom he belonged to, or who ſent him! When you heard this, did you tell the news to Mr. *Maynard*'s family?

Webbe. I do not know whether I did or not, but I believe I did tell it.

Mr. Horne. Strange indeed! that upon hearing ſuch news as muſt have ſurprized and concerned every other man, you ſhould be ſo very indifferent about it, as not to recollect poſitively your telling it to the family!

Webbe. I believe I told them the news.

Mr. Horne. How long did you ſtay at Mr. *Maynard*'s after hearing the news?

Webbe. Not very long.

Mr. Horne. Where did you go from thence?

Webbe. I went to Mr. *John Symmonds*'s.

Mr. Horne. Who did you find there?

Webbe. Mr. *Edward Bridgwater.*

Mr. Horne. Did you tell them the news of the murder when you went there?

Webbe. No, I did not.

Mr. Horne. Did you not receive a letter from the priſoner while you were at Mr. *Symmonds*'s?

Webbe.

Webbe. Yes, I received a note from him.

Mr. Horne. What was the purport of it?

Webbe. It was, as well as I remember, "*Dear "doctor, I want much to see you, on receipt of "this, come immediately to me*".

Mr. Horne. Did not Mr. *Symmonds*, while you were at his houſe, receive a letter, giving him an account of the murder?

Webbe. Yes, he did.

Mr. Horne. Did he not, upon receiving the news, aſk you if the priſoner did not ſleep at your houſe the night before?

Webbe. Yes, he did; and I told him that the priſoner had ſlept at my houſe the night before.

Mr. Horne. Did he not aſk you if you had ſeen the priſoner that morning?

Webbe. Yes, I believe he did.

Mr. Horne. What anſwer did you make him?

Webbe. I do not recollect the anſwer.

Mr. Horne. Did you, or did you not tell him you had not ſeen the priſoner that day?

Webbe. I do not recollect what I told him.

Mr. Horne. Did not Mr. *Symmonds*, on hearing the news of the murder, ſay, he would go and aſſiſt the *poſſe* in taking the priſoner? and did he not immediately order his horſe, and ſet out for that purpoſe?

Webbe. Yes, he did ſay he would go and aſſiſt, and did order his horſe, and I believe did go.

Mr. Horne. Did you make any offer to aſſiſt in taking the priſoner, or did you tell Mr. *Symmonds* where the priſoner was?

Webbe. No, I did not.

Mr. Horne. Why did you not offer to give your aſſiſtance? Was it not the duty of every honeſt man to aſſiſt in taking up a murderer? What was your reaſon for behaving with that indifference, on a matter of ſuch conſequence?

Webbe. It was none of my buſineſs. *I did not like ſuch troubleſome jobbs.*

Mr. Horne. It is very ſtrange you ſhould act thus, when a gentleman of Mr. *Mills*'s univerſal good character had loſt his life, nay, when it was reported he had been murdered! Surely you muſt have had ſome very particular private reaſons for ſuch a behaviour!

Webbe. I did not care to meddle in ſuch matters; I thought it was *nothing to me.*

Mr. Horne. How long did you ſtay at Mr. *Symmonds*'s, after you received the letter you mention from the priſoner?

Webbe. I did not ſtay long; I went immediately to Mr. *John Herbert*'s, where I found the priſoner.

Mr. Horne. Who was with the priſoner?

Webbe. No body but the family, they were drinking tea.

Mr. Horne. Where was the priſoner taken?

Webbe. At Mr. *John Herbert*'s.

Mr. Horne. Was you preſent when he was taken?

Webbe. Yes, I was.

Mr. Horne. How long had you been with the priſoner before he was taken?

Webbe. Not long.

Mr. Horne. How long?

Webbe. I cannot poſitively ſay.

Mr. Horne. Pray, Sir, recollect how long.

Webbe. When I came in they were drinking tea, and the priſoner took a turn or two about the houſe, and then deſired to ſpeak with me, and we went into the *neceſſary houſe*, where he was taken by the officers of juſtice.

Mr. Horne. This, Sir, does not anſwer the queſtion. Pray, Sir, tell the court and jury how long (as near as you can recollect) you were with the priſoner at Mr. *John Herbert*'s, before he was taken.

Webbe. We were in the *neceſſary houſe*, I believe, about five minutes before he was taken.

Mr. Horne. Pray, what did the priſoner ſay to you when he took you aſide there?

Webbe. I do not recollect what he ſaid to me.

Mr. Horne. What! not recollect what he ſaid to you, when you had been ſent for by the priſoner upon a matter of ſuch conſequence! You ſay, you had heard the news of the priſoner's killing the deceaſed; the priſoner wrote to deſire you to come immediately to him: you went, you ſay, directly to him, and were in private with him, the priſoner, your very particular friend; and, notwithſtanding all this, you cannot recollect what paſt between you! This is very ſtrange! but pray, Sir, recollect yourſelf, and tell the converſation.

Webbe. I cannot recollect poſitively what paſt, for I did not take much notice of it. I believe he ſaid ſomething of the report of his having killed Mr. *Mills*. He aſked me if I had heard the report of his having murdered Mr. *Mills?* I told him, yes, I had heard it; and he ſaid he ſhould not fly for it, for he knew nothing of it.

Mr. Horne. Did he, or did he not tell you he had killed Mr. *Mills* that morning?

Webbe. No, he did not.

Mr. Horne. Did no other converſation paſs between you and the priſoner at that time?

Webbe. No other that I remember.

Mr. Horne. Did you not aſk him whether he had been off *Nevis?*

Webbe. No, I did not.

Mr. Horne. Did not the priſoner, after he was taken into cuſtody, take you aſide in Mr. *Herbert*'s hall, and ſpeak in private with you?

Webbe. Yes, he did.

Mr. Horne. What did he ſay to you at that time?

Webbe. He deſired me to ſpeak to my uncle *George Webbe*, to let him have *ten piſtoles.*

Mr. Horne. Did nothing more paſs?

Webbe. Nothing more.

Mr. J. Loſack. Was that all he whiſpered to you?

Webbe. Yes, Sir, all.

Mr. J. Loſack. Was it neceſſary to convey ſuch a requeſt in a whiſper?

Mr. Horne. How long was you aſide with the priſoner at that time?

Webbe. About two or three minutes.

Mr. Horne. Did he give you any papers at that time?

Webbe. No, he did not.

Mr. Horne. Did you ſee the priſoner while he was in jail at *Nevis?*

Webbe. Yes, I ſaw him once.

Mr. Horne. What converſation had you with him then?

Webbe. I deſired him to make over *Bridgwater*'s eſtate to me.

Mr. Horne. What elſe?

Webbe. I do not remember any thing elſe.

Mr. Horne. Had you no other converſation at all?

Webbe. I do not recollect any thing but that.

Mr. Horne. Do you know whether the priſoner burnt any papers while he was in jail?

Webbe. I heard Mr. *Burnet* the marſhal ſay he did.

Mr. *Horne.* Do not you know it of your own knowledge?

Webbe. No, I only heard Mr. *Burnet* ſay ſo.

Mr. Horne. Did not you hear from the priſoner what thoſe papers were that he burnt?

Webbe. No.

Mr. Horne. Did the priſoner ever give you any paper relative to this murder?

Webbe. No, he never did.

Mr. Horne. Where was your boy *Pope* on the *Saturday* night preceding the murder?

Webbe. At home.

Mr. Horne. Did you ſend him out on any errand that night?

Webbe. No.

Mr. Horne. Did you ſend any of your horſes out?

Webbe. No.

Mr. Horne. You did not poſitively ſend either your boy *Pope*, or your horſe out at all that night?

Webbe. No, I did not poſitively.

Mr. Horne. Were you ſent for that night by any of your patients?

Webbe. No.

Mr. Sol. Gen. Gentlemen of the jury, I beg, for a particular reaſon, that you would attend to this part of doctor *Webbe*'s evidence. He ſays, that the night preceding the murder, he neither ſent out his boy *Pope*, nor any of his horſes; and further, that he himſelf was not ſent for by any of his patients.

Mr. Horne. Did you give the priſoner any dram or cordial that night?

Webbe. No.

Mr. Horne. Did you make any compoſition for him?

Webbe. No.

Mr. Horne. When you got up that night, did you obſerve what kind of night it was?

Webbe. Yes, it was a very boiſterous night.

Mr. Horne. Would you have gone out in ſuch a night for pleaſure?

Webbe. No, I ſhould not.

Mr. Horne. Do you know whether *Pope* was at *Bridgwater*'s eſtate that night?

Webbe. I cannot tell whether he was or no.

Mr. Horne. Do you think that, from the time you ſpoke to the priſoner that night, to the time you ſaw him riding up to your houſe the next morning, he could have been at *Saint Chriſtopher*'s and back again?

Webbe. Yes, I believe he might.

Mr. Horne. Were you preſent at Mrs. *Daſent*'s, when the priſoner's trunk was opened.

Webbe. Yes.

Mr. Horne. What was in it?

Webbe. There was a coat and waiſtcoat, and ſome linnen.

Mr. Horne. Was not there a night-gown?

Webbe. Not that I ſaw.

Mr. Horne. Were the coat and waiſtcoat wet?

Webbe. Yes, they were moiſt.

Mr. Horne. What part of them was moiſt?

Webbe. I cannot tell what particular part, but they were moiſt.

Mr. Horne. Are theſe the ſame coat and waiſtcoat that were found in the trunk, and is this the trunk *(the priſoner's trunk and cloaths ſhewn him)* in which they were found?

Webbe. I believe they are the ſame, and I believe that is the trunk.

Mr. Horne. Are theſe the ſame coat and waiſtcoat the priſoner had on, when he came to your houſe on *Sunday* morning, the nineteenth of *November* laſt?

Webbe. I cannot tell whether they are or not.

Mr. Horne. Is this the priſoner's trunk.

Webbe. I do not know.

Mr. Horne. Did you know that the coat and waiſtcoat were in the trunk at your houſe?

Webbe. No, I knew nothing of the matter.

Mr. Horne. May it pleaſe your honours, we have done with this witneſs.

Mr. Preſident. Mr. *Barbot*, the king's council have done with this witneſs, would you aſk him any queſtions?

Priſ. No, Sir.

Mr. Sol. Gen. Then call *Hugh O Donnell*, *(who appeared and was ſworn.)*

Mr. O Donnell, do you keep a tavern at *Nevis?*

O Donnell. Yes, Sir.

Mr. Sol. Gen. Do you remember to have heard the report of the deceaſed being killed?

O Donnell. Yes, I heard it on *Sunday* the nineteenth of *November* laſt.

Mr. Sol. Gen. Do you remember to have ſeen the priſoner the night before you heard the report?

O Donnell. The night before I heard the report, between ſeven and eight o'clock, doctor *Webbe* and Mr. *Barbot* the priſoner at the bar, rode up to my houſe. I called to the priſoner, and gave him a letter that had been left at my houſe for him. As ſoon as I gave him the letter, he attempted to read it by the light of the moon, but finding, I ſuppoſe, that he could not, he alit off his horſe, and came into the houſe; doctor *Webbe* followed him in, and the priſoner, as ſoon as he came in, aſked for pen, ink, and paper, which was brought him, and he ſat down to write, and continued writing for a conſiderable time.

Mr. Sol. Gen. Was doctor *Webbe* in the room with the priſoner while he was writing?

O Donnell. Yes, the priſoner called to him ſeveral times, and he went to him.

Mr.

Mr. Sol. Gen. Did the priſoner ſpeak to him while he was writing?

O Donnell. Yes, but I did not hear what he ſaid, for they ſpoke in a kind of whiſper.

Mr. Sol. Gen. When the priſoner called doctor *Webbe* to him, did doctor *Webbe* look over him?

O Donnell. Yes, he did look over him.

Mr. Sol. Gen. What did the priſoner do with the paper he was writing, when he had finiſhed it?

O Donnell. As ſoon as it was finiſhed, he ſealed it, and the priſoner and doctor *Webbe* went into another room, and after ſome little time, doctor *Webbe* came out, and deſired doctor *Potts*, Mr. *Springett*, and myſelf, to go in and witneſs a paper: we went into the room, where the priſoner was, and we did ſee him write his name to the ſeal.

Mr. Sol. Gen. Did you ſee him acknowledge it?

O Donnell. Yes, he put his thumb on the ſeal, and ſpoke ſome words, but they were hurried over ſo inarticulately, that I did not underſtand them.

Mr. Sol. Gen. Tell in what manner he did it.

O Donnell. When he took his thumb off the ſeal, he ſaid, *ſeal and deliver this*, and then mumbled over ſome words (as I ſaid before) ſo very inarticulately, that I did not underſtand them.

Mr. Juſtice Greatheed. Was there any thing written juſt over the place where you ſigned?

O Donnell. I believe there was, but he covered that with his hand.

Mr. Sol. Gen. Pray what did you take that paper to be?

O Donnell. I took it to be a will.

Mr. Sol. Gen. Why did you think it was a will?

O Donnell. Becauſe there were three witneſſes to it.

Mr. Sol. Gen. Who witneſſed the paper beſides yourſelf?

O Donnell. Doctor *Potts* and Mr. *Springett* were the other witneſſes.

Mr. Sol. Gen. What did the priſoner do with the paper, after it was ſigned and witneſſed?

O Donnell. He folded it up, and gave it to doctor *Webbe.*

Mr. Sol. Gen. Did you hear him ſay any thing, when he delivered it to doctor *Webbe?*

O Donnell. He did ſay ſomething, but I could not hear diſtinctly what it was, for he ſpoke in a low voice.

Mr. Sol. Gen. Did you hear him pronounce the words, *publiſh* or *declare?*

O Donnell. I did not hear any one word diſtinctly that he ſaid.

Mr. Sol. Gen. Had you reaſon to think, from his manner of pronouncing the words, that he intended to conceal them?

O Donnell. No, I did not apprehend that he did.

Mr. Sol. Gen. In what manner did he ſpeak the words?

O Donnell. He ſeemed to ſpeak them indifferently.

Mr. Sol. Gen. Was the paper ſealed, or only only folded up, when he delivered it to doctor *Webbe?*

O Donnell. It was folded up, but not ſealed.

Mr. Sol. Gen. Is it uſual to make wills, or draw inſtruments of writing, at your tavern?

O Donnell. No, Sir, I do not remember any ſuch thing being done at my houſe before.

Mr. Preſident. Would you ask this witneſs any queſtions, Mr. *Barbot?*

Priſ. No, Sir.

Mr. Sol. Gen. Then call *Charles Potts* (who was ſworn.)

Do you remember on what day it was, you heard that the deceaſed was murdered?

Potts. Yes, I remember it was on *Sunday* the nineteenth of *November* laſt.

Mr. Sol. Gen. Were you at Mr. *O Donnell's* tavern the night before you heard the deceaſed was killed?

Potts. Yes, I was.

Mr. Sol. Gen. Do you remember what paſt with regard to your witneſſing any paper for the priſoner?

Potts. I was ſitting in the tavern in the evening, and ſomebody called me, and told me, I was wanted in the inner room.

Mr. Sol. Gen. Who called you?

Potts. I cannot tell who it was, but ſomebody called me, and told me, I was wanted in the inner room, and I went in, and the priſoner deſired me to ſign, as a witneſs, to an inſtrument of writing; and accordingly the priſoner ſigned his name to it: Mr. *O Donnell* ſigned firſt as a witneſs to it, I ſigned next, and Mr. *Springett* laſt.

Mr. Sol. Gen. Did not the priſoner acknowledge that inſtrument of writing, when he had ſigned his name to it?

Potts. Yes, he put his thumb on the ſeal, and took it off again.

Mr. Sol. Gen. What did he ſay when he acknowledged it?

Potts. I do not recollect what he ſaid.

Mr. Sol. Gen. What did you apprehend that inſtrument of writing to be?

Potts. I thought it was ſome deed to ſecure *Jacob Saunders.*

Mr. Sol. Gen. Why did you think ſo?

Potts. Becauſe I met the priſoner and doctor *Webbe* coming from Mr. *Saunders's* that day.

Mr. Sol. Gen. Is that all the reaſon?

Potts. That is all, Sir.

Mr. Sol. Gen. Did you read the paper before you ſigned it?

Potts. No, I did not read it.

Mr. Sol. Gen. Nor any part of it?

Potts. No, Sir.

Mr. Sol. Gen. Then how are you ſure it was not a note of hand that you ſigned?

Potts. I am ſure it was not a note of hand, for it was too long.

Mr. Sol. Gen. What was too long, the atteſtation? Did you not ſign juſt under the atteſtation?

Potts. I did not obſerve the atteſtation: I had no ſuſpicion of its being a note of hand: I thought it was a deed to ſecure Mr. *Saunders's* debt.

Mr. Sol. Gen. Did not the priſoner cover the atteſtation with his hand?

Potts.

Potts. He did not when I ſigned.

Mr. Sol. Gen. Did you not hear the priſoner ſay he publiſhed that paper as his will.

Potts. No, I did not.

Mr. Sol. Gen. Did you come to the tavern by accident, or did any one deſire you to be there at that time?

Potts. I came there by accident; I had been round the iſland, and called at Mr. *O Donnell*'s to refreſh myſelf with a mug of beer.

Mr. Sol. Gen. Where did you go after you ſigned as a witneſs to the paper?

Potts. I went with Mr. *James Brodbelt* to his plantation, and from thence I went to doctor *Webbe*'s: it was about ten o'clock when I got there, and I went to bed in about an hour after.

Mr. Sol. Gen. Did you ſee the priſoner that night at doctor *Webbe*'s?

Potts. No, I did not ſee him from the time I left Mr. *O Donnell*'s, till about nine o'clock next morning I ſaw him come into the yard on horſeback, upon doctor *Webbe*'s horſe, *Kent*.

Mr. Sol. Gen. Did you ever hear of any reſentment the priſoner had againſt the deceaſed?

Potts. None in the world: on the contrary, I have always heard him expreſs great reſpect for the deceaſed.

Priſ. Mr. *Potts*, you ſaw me ſome days before this accident happened; did you ever hear me expreſs any reſentment againſt Mr. *Mills*?

Potts. Never, I never did indeed.

Priſ. Have you not often heard me ſpeak of him in the moſt reſpectful terms, and ſuch as ſhewed I had a great eſteem for him?

Potts. I have indeed very often; and I never heard you ſay any thing of him that looked like malice or reſentment.

Thomas Hobſon ſworn.

Mr. Sol. Gen. Do you remember hearing the report of the deceaſed being killed?

Hobſon. Yes, Sir.

Mr. Sol. Gen. Do you remember when it was that you heard it?

Hobſon. It was on *Sunday* the 19th of *November* laſt.

Mr. Sol. Gen. Where do you live?

Hobſon. I live on *Bridgwater*'s eſtate at *Nevis*.

Mr. Sol. Gen. Pray inform the court and the jury of what you know, concerning a horſe and boy coming to your houſe, the night before you heard the deceaſed was killed.

Hobſon. On *Saturday* night, the night before I heard the deceaſed was killed, doctor *Webbe*'s boy *Pope* came to the houſe where I live with doctor *Webbe*'s horſe, and knocked at the door, and called me: it was about midnight. I got up and opened the door, and ſaw it was *Pope*. He was wet. I asked him where he had been; he told me he had been round the iſland looking for his maſter.

Mr. Sol. Gen. Was the horſe wet?

Hobſon. Yes, the horſe was wet.

Mr. Sol. Gen. Did the horſe and boy ſtay at your houſe all night?

Hobſon. Yes, Sir, he put the horſe in the ſtable, and ſtaid there all night; and about eight o'clock next morning, I ſaw a little man, *in a whitiſh coat, and a ſilver laced hat*, coming up. As ſoon as he came up to the ſteps, he asked for *Pope*. *Pope* went to him, and he bad him *ſaddle the horſe*.

Mr. Sol. Gen. Did not he ask firſt, if there was a horſe there?

Hobſon. No, the minute he came to the ſteps, he called for *Pope*, and bad him *ſaddle the horſe*.

Mr. Sol. Gen. Did he ſeem to expect a horſe there?

Hobſon. Yes, I believe he did, for he bad *Pope ſaddle the horſe*, without asking whether there was any horſe there.

Mr. Sol. Gen. Pray look at the priſoner. Was the perſon you ſaw that morning, that bad *Pope ſaddle the horſe*, like the priſoner?

Hobſon. Yes, it was that very man.

Mr. Sol. Gen. You are ſure it was the priſoner?

Hobſon. Yes, I am ſure it was him.

Mr. Sol. Gen. After he ordered *Pope to ſaddle the horſe*, what did he do then?

Hobſon. As ſoon as the horſe was ſaddled, he asked *Pope* which road he ſhould take, and *Pope* ſhewed him the nigheſt way to *Pinney*'s, where doctor *Webbe* lives, and he got on horſeback, and rode away.

Mr. Sol. Gen. Did the priſoner come up from the bay the morning you ſaw him?

Hobſon. I believe he did; he came from that way.

Mr. Sol. Gen. Did you take notice whether his cloaths were wet?

Hobſon. I obſerved his ſhoes were wet. I cannot tell if the reſt of his cloaths were wet or not.

Mr. Sol. Gen. How high up was he wet?

Hobſon. Only his ſhoes that I ſaw.

Mr. Sol. Gen. Had he any boy with him with a trunk?

Hobſon. No, I ſaw no boy with him, nor no trunk.

Mr. Sol. Gen. We have done with this witneſs.

Mr. Preſident. Would you ask this witneſs any queſtions, Mr. *Barbot*?

Priſ. No, Sir.

Sarah Hobſon ſworn.

Mr. Sol. Gen. Where do you live?

Hobſon. I live on *Bridgwater*'s eſtate at *Nevis*.

Mr. Sol. Gen. Do you remember hearing the report of the deceaſed being killed?

Hobſon. Yes.

Mr. Sol. Gen. And when it was?

Hobſon. Yes, it was on *Sunday* the nineteenth of *November* laſt.

Mr. Sol. Gen. Well, give the court and the jury an account of what you know of a horſe and boy coming to your houſe, the night before you heard of the report of the murder.

Hobſon. The night before I heard the report of the murder, I heard a knocking at the door about midnight, and I called to my brother, and asked him what it was. He told me he believed it was the negroes cutting wood in the garden; but I knew it could not be that, for the garden was too far off to have heard, if it had been ſo. My brother immediately got up and opened the door,

door, and found it was doctor *Webbe*'s *Pope* with his horſe. My brother asked him where he had been; he ſaid he had been round the iſland looking for his maſter. I did not ſee *Pope*, but I heard this as I was in the chamber; and, about eight o'clock the next morning, as I was ſtanding at the door, I ſaw a little gentleman coming up to the houſe. As ſoon as I ſaw him, I went into the chamber, and looked through the window at him; and as ſoon as he came up to the ſteps, he called for *Pope*. *Pope* went to him, and he ordered him to *ſaddle the horſe*.

Mr. Sol. Gen. Gentlemen of the jury, you obſerve both theſe evidences ſay the boy *Pope* declared, when he came to *Bridgwater*'s, that he was looking for his maſter; and yet, as I deſired you to take notice in the courſe of doctor *Webbe*'s evidence, the doctor himſelf declared, he neither ſent out this boy, nor any of his horſes that night. What! did he bid *Pope* ſaddle the horſe, before he knew whether there was a horſe there or no?

Hobſon. Yes, the moment he came to the ſteps, he called for *Pope*, and bad him *ſaddle the horſe*.

Mr. Sol. Gen. Did he ſpeak as if he expected to find a horſe there?

Hobſon. I believe he did, by bidding *Pope ſaddle the horſe* the minute he came to the ſteps.

Mr. Sol. Gen. Pray, how was he dreſſed?

Hobſon. He had on *a whitiſh coat, a ſilver laced hat, and a pigtail wig*.

Mr. Sol. Gen. Look at the priſoner. Pray, was the perſon, you ſaw that morning, like him?

Hobſon. Yes, that is the very man.

Mr. Sol. Gen. You are ſure it was the priſoner?

Hobſon. Yes, I am ſure it was him.

Mr. Sol. Gen. What did he do, after he had ordered *Pope* to ſaddle the horſe?

Hobſon. As ſoon as the horſe was ſaddled, he asked *Pope* which road he ſhould take, and *Pope* ſhewed him the nigheſt way to *Pinney*'s, where doctor *Webbe* lives, and he got on horſeback, and rode away.

Mr. Sol. Gen. Do you know where the priſoner came from, when he came up to your houſe?

Hobſon. I believe he came from the bay, for he came from that way.

Mr. Sol. Gen. Were his cloaths wet?

Hobſon. I did not take notice that his cloaths were wet, but his ſhoes were.

Mr. Sol. Gen. How high up, was he wet?

Hobſon. I only obſerved that his ſhoes were wet.

Mr. Sol. Gen. Had he any boy with him with a trunk?

Hobſon. No, he had no body at all with him, that I ſaw, nor no trunk.

Mr. Sol. Gen. We have done with this evidence.

John M^c.Kenley ſworn.

Mr. Sol. Gen. Mr. *M^c.Kenley*, where do you live?

M^c.Kenley. I live upon Mr. *Spooner*'s eſtate at *Frigate-Bay*.

Mr. Sol. Gen. Pray inform the court and the jury of what you know concerning the death of the deceaſed.

M^c.Kenley. On *Sunday* morning the nineteenth of *November* laſt, I got up at about four o'clock, and went out to give ſome orders in the plantation, and returned in about a quarter of an hour. As ſoon as I came in, I lay down upon my bed, and preſently after a negro boy ruſhed into my chamber, and threw himſelf upon the bed where I was lying, and cried out, "*O Lord, maſter, "make haſte and come down, for my maſter is fight-"ing with ſword and piſtols, with a gentleman "that is come from* Nevis". I immediately got up, and asked him, who was his maſter? He anſwered me, Mr. *Mathew Mills*. I then looked hard at the boy, and knew him to be *Coomy*, that always ran with the deceaſed. The boy immediately got upon his maſter's horſe (for he had rode up) and galloped down as faſt as he could, and I followed him on foot, for I thought I ſhould get down to the bay ſooner, than if I ſtayed to have my horſe ſaddled. When I came down to the place juſt by the ſtarting poſt, I found *Coomy* ſupporting the deceaſed between his legs, and the deceaſed's head leaning on *Coomy*'s breaſt. I ran immediately up to him, and asked him who had uſed him ſo, but he made me no anſwer. I took hold of his hand at the ſame time, and he had no pulſe. I found then that he was ſtone dead, but ſtill warm, and was but juſt expired. I then asked *Coomy*, who it was that had killed his maſter; he told me it was Mr. *Barbot*, and that if I would go down to the bay I might ſee him, for that he was juſt gone off in a canoo.

Priſ. Gentlemen of the jury, you'll pleaſe to obſerve, that what Mr. *M^c.Kenley* tells you of *Coomy*'s declaration, is no evidence at all. *Coomy* himſelf cannot be an evidence at any rate, much leſs can what he only told another be evidence.

Mr. Frye. Gentlemen, this is but hearſay-evidence, which I appeal to the bench is no evidence in any caſe, much leſs where a man's life is concerned.

M^c.Kenley. I immediately ran down to the ſea-ſide, and ſaw a canoo with four oars and a paddle, making very faſt from the ſhore.

Mr. Sol. Gen. At what diſtance was the canoo from the ſhore, when you firſt ſaw it?

M^c.Kenley. It was about fifty yards off.

Mr. Sol. Gen. Could you diſtinguiſh the perſons in the canoo?

M^c.Kenley. No, I could not diſtinguiſh who they were. I ſaw ſome body in white ſitting in the ſtern of the canoo, but I could not tell who it was. I was in ſo much confuſion, that I did not take as much notice as I might have done.

Mr. Sol. Gen. What cloaths had the deceaſed on?

M^c.Kenley. He had on his great coat and his gloves.

Mr. Sol. Gen. What kind of gloves?

M^c.Kenley. I really cannot tell what kind of gloves; they were of a browniſh colour.

Mr. Sol. Gen. Were they *buff* gloves?

M^c.Kenley. No, I think they were not *buff*; but I cannot poſitively ſay what kind of gloves they were.

Mr. Sol. Gen. What ſituation were the deceaſed's piſtols in?

Mc. Kenley. His piſtols were in the holſters on his horſe.

Mr. Sol. Gen. Did you examine his piſtols?

Mc. Kenley. No, I did not.

Mr. Sol. Gen. Was his ſword drawn?

Mc. Kenley. No, his ſword was lying on the ground at ſome diſtance from him in the ſcabbard, and the belt wrapt round the hilt.

Mr. J. Loſack. What time do you think it would take to go in a canoo from *Frigate-Bay* to the *Salt-ponds?*

Mc. Kenley. I cannot tell; but the canoo was rowing very hard from the ſhore.

Mr. Sol. Gen. How long do you think it would take? You may gueſs pretty near the time?

Mc. Kenley. I believe it might take about half an hour.

Priſ. Was the perſon you ſaw in white, ſitting in the ſtern of the canoo, a white man or a negro?

Mc. Kenley. I cannot tell whether it was a white man or a negro.

Mr. Sol. Gen. Call *William Johnſon (who appeared.)*

Priſ. May it pleaſe your honours, I humbly beg leave to oppoſe *Johnſon*'s being ſworn.

Mr. Preſident. Let us hear your objections to him.

Priſ. He is an infamous perſon.

Mr. Frye. He is ſo, for I ſaw him publickly whipt at *Montſerrat* for petty larceny.

Mr. Sol. Gen. May it pleaſe your honours, if the priſoner would invalidate the evidence of *Johnſon*, on the ſcore of what Mr. *Frye* alledges, it is neceſſary that he produce the record of his conviction. Let him produce the record.

Mr. Frye. I knew nothing of this man's being produced as a witneſs till the day before yeſterday; otherwiſe I could have had the record, or an atteſted copy of it now. But I humbly apprehend I may be admitted to produce witneſſes to prove that he was publickly whipt for petty larceny, for ſtealing a pair of ſilver ſhoe-buckles. He is rendered an infamous man, and ought not to be admitted as a witneſs.

Mr. Sol. Gen. I am ſurprized to hear a gentleman of Mr. *Frye*'s ſtanding and experience in the law, offer a thing of this kind, when he muſt know, that nothing but the record of this man's conviction, or an atteſted copy of it, can diſable him to be a witneſs. It is abſolutely illegal, Sir, to offer to prove the fact Mr. *Frye* ſpeaks of by witneſſes, who, he ſays, ſaw *Johnſon* puniſhed; or by any other method, than that which I have mentioned.

Mr. Frye. Surely, we ſhall be allowed to examine witneſſes to the character of this man.

Mr. Sol. Gen. Yes, to his general character you may be allowed to give evidence, but not to any particular part of it; and that only to diſcredit his evidence, after he has given it: but no evidence of that ſort can diſable him from being a witneſs at all.

Mr. Frye. I did ſee him publickly whipt, and I know him to be an infamous perſon, and would not regard his oath of a farthing.

Mr. Horne. May it pleaſe your honours, I humbly beg that Mr. *Frye* be not allowed to ſpeak in this manner of the witneſs. If he had intended to object to this man, he ought to have done it legally; he knew the method the law had preſcribed, and ought to have purſued it; and I hope your honours will not allow him to diſcredit the witneſs, by throwing out things he cannot legally ſupport. It is done with a deſign to influence the jury. If Mr. *Frye* can produce any evidence to his general character, he has been told he may do ſo, but that in its proper place, and not to prevent his giving his evidence, or before he has given it.

Mr. Frye. I will produce witneſſes to his character; but it is ſtrange I ſha'nt be allowed to prove that fact by *vivâ voce* witneſſes!

Mr. Horne. You are not to be allowed that, Mr. *Frye*; you know it is illegal; and I am ſurprized a gentleman of your knowledge in the law, ſhould inſiſt on a thing of this kind.

Mr. Frye. Go on then, Sir, I will by and by produce witneſſes to this man's character.

Mr. Preſident. Swear *Johnſon. (which was done.)*

Mr. Sol. Gen. Did you come to this iſland at any time in or about the month of *November* laſt?

Johnſon. Yes, on *Sunday* the nineteenth of *November.*

Mr. Sol. Gen. Pray inform the court and the jury, whether you ſaw the priſoner at the bar on *Sunday* the nineteenth of *November* laſt, and where it was you ſaw him?

Johnſon. I left *Montſerrat* on *Saturday* the eighteenth of *November* laſt, and came to an anchor at the *Salt-ponds* at about two o'clock the next morning, and at about four I put out of the *Salt-ponds*; and in about two hours after, a canoo with four oars and a ſail paſt by me. The priſoner was in the canoo, he had on a white coat and a laced hat, and a dark coloured waiſtcoat.

Mr. Sol. Gen. Do you know the priſoner?

Johnſon. Yes, I have ſeen him ſeveral times at *Nevis*, and once at *Montſerrat.*

Mr. Sol. Gen. Could you ſee, from the place where you were when you met the canoo, all the way between *Frigate-Bay* and *Nevis?*

Johnſon. Yes.

Mr. Sol. Gen. And was there any other canoo in the channel?

Johnſon. No, there was none but that which the priſoner was in.

Mr. Sol. Gen. At what diſtance was the canoo from you, when it paſſed by?

Johnſon. It was about forty or fifty yards off.

Mr. Sol. Gen. Where did you think it came from?

Johnſon. It ſeemed coming from *Frigate-Bay*, and was ſtanding for *Nevis.*

Mr. Sol. Gen. Are you ſure the priſoner at the bar was the perſon you ſaw in the canoo?

Johnſon. Yes, I am ſure he was the perſon.

Mr. Frye. It is very odd you ſhould now be ſo poſitive it was the priſoner, when you could not poſitively ſwear to him the very day of the murder, when you were examined before the coroner's inqueſt. We ſhall produce a witneſs by and by to prove that you were not then ſo poſitive.

Mr.

Mr. Sol. Gen. Since this has been thrown out, I beg leave to aſk the witneſs another queſtion. Pray did you ſee the priſoner at any time between your examination before the coroner, and this day?

Johnſon. Yes, I ſaw him in jail; and when I ſaw him there, I was ſatisfied he was the man that I had ſeen in the canoo the morning I was coming from the *Salt-ponds*.

Mr. Sol. Gen. However, to make this matter ſtill plainer, we ſhall call a gentleman of character, who will inform the court and jury, that this witneſs declared his ſeeing the priſoner at the time and place he has now ſworn he did, before he had received any intimation, or had it at all ſuggeſted to him, that the priſoner was then there. Call *Thomas Wilſon*, eſquire.

Thomas Wilſon, eſquire, ſworn.

Mr. Sol. Gen. Mr. *Wilſon*, will you pleaſe to give the court and the jury an account of your ſeeing *Johnſon* on the nineteenth of *November* laſt, and what paſt between you?

Wilſon. On *Sunday* the nineteenth of *November* laſt, in the morning, on hearing that the deceaſed was killed, I went down to Mr. *Colhoun*'s, to enquire further of the matter. I ſtaid there about half an hour, and at my return home I found this witneſs *Johnſon* waiting for me with a letter, which he had juſt brought from Mr. *Miſſet* of *Montſerrat*. He told me that Mr. *Miſſet* had hired him on purpoſe to bring me that letter, and that if I did not diſpatch him by twelve o'clock, Mr. *Miſſet* was to pay him ſo much an hour after that time. I then ſaid to him, *there has been murder committed here.* He aſked me, *What murder?* I told him that a gentleman of this iſland, one Mr. *Mills* was killed, and it was ſuppoſed by Mr. *Barbot*. *Barbot!* ſaid he, *why I met him going in a canoo to* Nevis *this morning. Do you know him then?* ſaid I. *Yes*, ſaid he, *I have known him above eighteen months.* I thought this ſo material a circumſtance, that I immediately acquainted Mr. *Colhoun* of it.

Mr. Sol. Gen. The court and jury will take eſpecial notice of Mr. *Wilſon*'s evidence, becauſe it will ſtand for an anſwer to the objection that will be made to *Johnſon*'s evidence from what they inſinuate of the badneſs of his character: which in this caſe muſt be wholly out of the queſtion, ſeeing the firſt information he gave was before there is the leaſt probability he could have had it ſuggeſted to him.

Jaſper Thomas ſworn.

Mr. Sol. Gen. Pray inform the court and the jury whether you ſaw the priſoner on the nineteenth of *November* laſt, and where you ſaw him.

Thomas. On *Sunday* morning, the nineteenth of *November* laſt, I ſaw a canoo land under the manchionel trees, juſt under *Lowland-Church*: it was Mr. *Cribbe*'s canoo; Mr. *Halburd's Peter*, and Mr. *Deverade's Joe* were in it, and the priſoner jumped out of the canoo the inſtant it ſtruck the ſhore. He had on a ſilver laced hat, and a whitiſh coat.

Mr. Sol. Gen. What time in the morning was it that he landed?

Thomas. It was between ſix and ſeven in the morning.

Mr. Sol. Gen. Did any body come out of the canoo with the priſoner?

Thomas. There was a little yellow negro boy, with a little red trunk on his head, that jumped out of the canoo at the ſame time that the priſoner did, and went towards the town.

Mr. Sol. Gen. Did you ſee the canoo at any diſtance before it landed?

Thomas. I ſaw it above fifteen hundred yards off before it landed. [illegible] under ſail, and they did not ſtrike ſail [illegible] the canoo ſtruck the ground.

Mr. Sol. Gen. Where did you think the canoo came from?

Thomas. It ſeemed to me to be coming from the *Salt-ponds*.

Mr. Sol. Gen. Are you ſure it was the priſoner at the bar you ſaw land out of the canoo?

Thomas. Yes, I am ſure it was him, for I know him very well.

Mr. Sol. Gen. Do you know where he went to when he landed?

Thomas. No, I cannot tell where he went to.

John Thomas ſworn.

Mr. Sol. Gen. Do you remember when it was you heard the deceaſed, was killed?

Thomas. Yes, it was on *Sunday* the nineteenth of *November* laſt that I heard it.

Mr. Sol. Gen. Did you ſee the priſoner at the bar that day?

Thomas. Yes.

Mr. Sol. Gen. Then give the court and the jury an account where, and at what time you ſaw him.

Thomas. It was on *Sunday* morning, the nineteenth of *November* laſt, the day that I heard the deceaſed was killed. I was with my father *Jaſper Thomas*, and I ſaw a canoo at a diſtance under ſail, that ſeemed to be coming from *Saint Kitt*'s, and I ſaid to my father, I believe there were ſome *Saint Kitt*'s people coming up, and ſoon after the canoo came aſhore, and Mr. *Hulburd's Peter* and Mr. *Deverade's Joe* were in it; and I ſaw a little man very like the priſoner, jump out of the canoo, and run up the bank. He had on a ſilver laced hat and a long-tail wig, a whitiſh coat, and a browniſh waiſtcoat.

Mr. Sol. Gen. Was it the priſoner at the bar that you ſaw?

Thomas. I do believe it was him, for the perſon I ſaw was very like him.

Mr. Sol. Gen. Did any body land out of the canoo beſides the priſoner?

Thomas. There was a little yelloviſh negro boy with a ſmall red trunk on his head, that jumped out of the canoo at the ſame time the priſoner did, and went towards town.

Mr. Sol. Gen. What time in the morning was it that the priſoner landed out of the canoo?

Thomas. It was between ſix and ſeven in the morning.

Mr. Sol. Gen. Did you obſerve which way he went after he landed?

Thomas. No, I did not take notice which way he went.

William

William White ſworn.

Mr. Sol. Gen. Do you know the priſoner at the bar?

White. Yes, I know him very well.

Mr. Sol. Gen. Do you live at *Nevis?*

White. No, but I have been working there for above a twelvemonth.

Mr. Sol. Gen. When was it you firſt heard the report of the deceaſed being killed?

White. I heard it on *Sunday* the nineteenth of of *November* laſt.

Mr. Sol. Gen. Did you ſee the priſoner that day?

White. Yes, I was at work at Mr. *Woodley*'s eſtate at *Nevis* that very morning, and I looked towards the common road, and ſaw a little man that I took for the priſoner. He was walking up the road that leads to *Bridgwater*'s eſtate.

Mr. Sol. Gen. Pray does that road lead to any other eſtate or houſe beſides *Bridgwater*'s?

White. Yes, it leads to Mr. *Huggins*'s.

Mr. Sol. Gen. Did you ſee where the priſoner came from?

White. No, but I believe he came from the bay.

Mr. Sol. Gen. How was he dreſſed?

White. He had on a laced hat, and a brown coat.

Mr. Sol. Gen. A brown coat? You muſt be miſtaken ſurely?

White. No, I am not; it was a brown coat.

Mr. Sol. Gen. Do you ſee any coat here in court that is like it? Look about and ſee if you can't find ſome coat that reſembles it in colour.

White. It was like this coat, I think (*ſhewing a brown coat.*)

Mr. Sol. Gen. He may be miſtaken in the colour of the coat. If he ſwears to the identity of the perſon it is ſufficient. Once more let me aſk you on your oath, Are you ſure it was the priſoner at the bar that you ſaw?

White. Yes, I am ſure it was him.

Mr. *Edward Bridgwater* ſworn.

Mr. Sol. Gen. Mr. *Bridgwater*, pray inform the court and the jury whether you ſaw the priſoner on the nineteenth of *November* laſt, and where you ſaw him.

Bridgwater. On the nineteenth of *November* laſt, between nine and ten in the morning, I ſaw the priſoner riding over *Gruff's Gutt*, the neareſt way to Dr. *Webbe*'s. He met *Jacob Saunders*, and they ſtopt and ſpoke together, and that gave me an opportunity of coming pretty near him, and I took notice that the priſoner was on a horſe of doctor *Webbe*'s; it was a ſorrel-horſe, with a white face. In the afternoon of the ſame day I went to Mr. *John Symmonds*'s; while I was there doctor *Webbe* came in, and preſently after Mr. *Symmonds* received a letter, that gave an account of the priſoner's having killed the deceaſed. As ſoon as Mr. *Symmonds* mentioned it, doctor *Webbe* ſaid, that the priſoner had lain at his houſe the night before.

Mr. Sol. Gen. Did you perceive any alteration in doctor *Webbe*, on Mr. *Symmonds*'s mentioning what had happened?

Bridgwater. Yes, he changed countenance, and ſeemed, I thought, a good deal confuſed; and Mr. *Symmonds* aſked him, if he had ſeen the priſoner that morning? doctor *Webbe* anſwered, that he had not ſeen the priſoner ſince he went to bed the night before at his houſe; at which I expreſſed a good deal of ſurprize, and ſaid, that I had ſeen him that morning riding towards doctor *Webbe*'s houſe on a horſe, which I was ſure belonged to doctor *Webbe.*

Mr. Sol. Gen. Did doctor *Webbe* make you any anſwer to this?

Bridgwater. I do not remember that he did, but in about five or ſix minutes after he went away, and ſaid he was going up towards the mountain.

John Cribbe ſworn.

Mr. Sol. Gen. Pray inform the court and the jury whether the priſoner hired a canoo of you, and when it was?

Cribbe. It was the *Friday* before I heard the deceaſed was killed. The priſoner hired my canoo to carry ſome letters to *Saint Kitt*'s, and the canoo returned the next day in the afternoon.

Mr. Sol. Gen. Did the priſoner hire the canoo again of you the day ſhe returned?

Cribbe. No, the day ſhe returned, the negroes that belong to her took her to go a fiſhing, as I underſtood; and I did not ſee them again 'till about eight o'clock on *Sunday* morning, which was the day I heard the deceaſed was killed. I went to *Peter*, and aſked him, "*what* "*luck?*" for I imagined they had been fiſhing: he anſwered me, "*poor luck*", and looked very thoughtful and melancholy, and ſaid, he was troubled. I aſked him what was the matter? he told me he had been at *Saint Kitt*'s with Mr. *Barbot*, who, he was afraid, had done a great deal of miſchief, for he believed he had killed Mr. *Mills.*

Priſ. Gentlemen of the jury, pray don't be influenced by this part of the evidence. This is the ſame with what *Mc. Kenley* ſwore of *Coomy*'s declaration; but neither one or other of them, as being only hearſay evidence, and that of ſlaves too, ought to affect me.

Mr. Frye. Nay, indeed, the evidence ought not to have been given: ſurely, no hearſay can be evidence. Nothing is more indiſputable than that.

Mr. Sol. Gen. In this caſe it is very material evidence; but of that by and by: we won't interrupt the courſe of evidence; but obſerve upon it in a more proper place. At what o'clock in the morning was it that you had this diſcourſe with *Peter?*

Cribbe. It was about ten o'clock.

Mr. Sol. Gen. Had you then heard it reported that the deceaſed was killed?

Cribbe. No, I had not heard it 'till *Peter* told me of it.

Mr. Sol. Gen. He was the firſt perſon you heard it from?

Cribbe.

Cribbe. Yes, he was the firſt that told me of it.

Mr. Sol. Gen. We will bring a witneſs to prove that *Peter* could not have heard the *report* of the murder at the time this witneſs ſays he told him of it; for we ſhall ſhew that the perſon who carried the firſt news of the murder to *Nevis* did not arrive there, 'till at leaſt an hour after *Cribbe* had the converſation he has related with *Peter*.

Call *Thomas Quin* (who was ſworn.)

Mr. Sol. Gen. Mr. *Quin*, at what o'clock did you arrive at *Nevis*, the day you were ſent up in purſuit of the priſoner at the bar?

Quin. It was about eleven o'clock, Sir.

Mr. Sol. Gen. When you arrived at *Nevis*, did you report publickly that the deceaſed was killed?

Quin. No, I did not ſay a word of it to any body but the gentleman I carried the letters to from Mr. *Colhoun*.

Mr. Sol. Gen. Was it known at *Nevis*, before you arrived there, that the deceaſed was killed?

Quin. No, I am ſure it was not, or I ſhould have heard of it. I am ſure I was the firſt that carried the news of it, for I did not ſtop or ſtay any where, but went off the minute Mr. *Colhoun* gave me the letters, and made the beſt of my way up.

Mrs. *Frances Daſent* ſworn.

Mr. Sol. Gen. Madam, will you pleaſe to give the court and the jury an account of what you know concerning the priſoner's taking away a caſe of piſtols from your houſe?

Daſent. Upon hearing that the *magazine* was broke open on *Sunday* night, the nineteenth of *November* laſt, I ordered all the arms in the houſe to be ſearched for, to ſee that there were none miſſing; and upon miſſing a pair of piſtols, I ordered the boy to look on the beam for them, where I had directed him to put them. He looked, and could find but one pair: I then grew very uneaſy, and ſent to deſire doctor *Webbe* to come over to me. He did ſo the next morning, and I told him I was very uneaſy; that I miſſed a pair of piſtols, and asked him if he knew where they were? He told me that he knew nothing of them. I begged of him then to help me ſearch for them. Accordingly he went into the ſhop with me, and ſearched there, but could not find them. From thence we went into the chamber, and the *doctor* looked under the bed and found the piſtols.

Mr. Horne. What was it that induced you to look for the piſtols?

Daſent. Hearing the magazine was broke open, and the accident that had happened to Mr. *Mills* together, made me think of looking for them. I was very uneaſy about it, for I had heard that the priſoner and doctor *Webbe* took down the piſtols in my abſence, while I was at my mother's, to fire out of.

Mr. Horne. Did you ſee a red trunk belonging to the priſoner, in the room where the piſtols were found?

Daſent. Yes, there was a ſmall red trunk that belonged to the priſoner.

Mr. Horne. Did you ever deſire the priſoner to leave your houſe?

Daſent. Yes; the *Thurſday* before this accident happened, I deſired him to come to my houſe no more, for ſome prudential reaſons I had.

Mr. Horne. Did this put an end to his viſits?

Daſent. Yes, he came to my houſe no more; but he ſent to borrow a horſe of me the day before the murder, which I refuſed to lend him; nor I knew nothing of his trunk being at my houſe 'till the *Monday* after the accident, that judge *Herbert* came to my houſe, and demanded the trunk, and it was opened before him.

Mr. Horne. Were you preſent when the trunk was opened?

Daſent. Yes, Sir.

Mr. Horne. What was in it, pray?

Daſent. I ſaw nothing in it but a brown waiſtcoat, and a pair of black breeches.

Mr. Horne. Did they belong to the priſoner?

Daſent. Yes, I believe they did.

Mr. Horne. Is this the priſoner's trunk, and are theſe the cloaths (*the priſoner's trunk and cloaths ſhewn her*) you ſaw taken out of that trunk?

Daſent. Yes, I believe they are.

Joſeph Herbert, eſquire, ſworn.

On hearing the deceaſed was killed by the priſoner with a pair of *James Daſent*'s piſtols, I went, the day after the murder, to Mrs. *Daſent*'s, to enquire for them. When I came there I ſaw a ſmall red trunk, which being opened, I found a pair of black breeches, and a brown waiſtcoat in it, which were wet. I touched the waiſtcoat with my tongue, and found it ſalt, from which I concluded it muſt have been wet with ſalt water. Theſe piſtols (*piſtols ſhewn him*) which Mrs. *Daſent* had miſſed, were ſhewn to me at the ſame time, and I was informed by ſome of the negroes, that they believed the priſoner's boy had brought the piſtols to Mrs. *Daſent*'s privately in his cloaths.

Mr. Sol. Gen. Is this the trunk, and are theſe the cloaths you ſaw at Mrs. *Daſent*'s, (*the trunk and cloaths ſhewn him*) the day after the murder?

Mr. Herbert. Yes, they are.

Doctor *Hamilton* and Mr. *Edwards* ſworn.

Mr. Horne. Doctor *Hamilton*, you were ſent for, I think, to inſpect the body of the deceaſed?

Dr. Hamilton. Yes, Sir, I was ſent for on *Sunday* the nineteenth of laſt *November* by the coroner, to view the body of the deceaſed. When I came to Mr. *Colhoun*'s, where the body lay, I found that the deceaſed had received a wound on the right ſide, which muſt have been given him by a ball out of ſome fire-arm.

Mr. Horne. Whereabout on the right ſide?

Dr. Hamilton. I cannot deſcribe it better than thus; by drawing a ſtraight line directly from the pap four inches downwards, and then carrying it four inches towards the back. In that place was the wound.

Mr. Horne. Sir, will you pleaſe to put your finger on the place, as near as you can gueſs, where the wound was received?

Dr. Hamilton. It was juſt here. (*placing his finger on his own ſide*)

Mr. Horne. Now go on, Sir, if you pleaſe.

Dr. Hamilton. I then, with the aſſiſtance of my ſon Mr. *Edwards*, opened the body, and found that the ball had entered between the two laſt falſe ribs, and ſplintered one of them, and had penetrated the body obliquely from the right to the left ſide, and had wounded the forepart of the liver on the left ſide. I found too, that in paſſing it had wounded a large blood-veſſel.

Mr. Horne. Do you think the deceaſed could have received that wound, if he had been ſtanding in a poſture of defence?

Dr. Hamilton. No, I think he could not, for the ſituation of the wound was ſuch, that had he been in a poſture of defence, he could not have received it in that place: and from the courſe the ball took (which was towards the forepart of the left ſide of the body) it is evident, I think, that the deceaſed could not have been in a poſture of defence.

Mr. Horne. Do you think that that wound was the cauſe of his death?

Dr. Hamilton. Yes, I am certain it was.

Mr. Horne. Did you find the ball?

Dr. Hamilton. No, I ſearched for it but could not find it. I believe it had fallen into the *abdomen*, which was ſo full of blood, that there was no poſſibility of finding the ball, unleſs we had taken out all the bowels; and it was ſo late, that the jury, ſatisfied on my report that the wound muſt have been given by a ball diſcharged from ſome fire-arm, and that it was the cauſe of the deceaſed's death, did not think it neceſſary to look any farther for the ball.

Mr. Horne. Mr. *Edwards*, you aſſiſted doctor *Hamilton* in opening the body of the deceaſed; can you give the court any farther information of the nature of the wound than what the *doctor* has already related?

Edwards. No, Sir, I can ſay no more than what doctor *Hamilton* has already related.

Mr. *Walter Pringle* and Mr. *Samuel Baker* ſworn.

Mr. Sol. Gen. Mr. *Pringle*, pray give the court and the jury an account of the ſituation you found the deceaſed's piſtols in the morning he was killed.

Pringle. On *Sunday* morning, the nineteenth of *November* laſt, I heard the deceaſed was killed at *Frigate-Bay*, and that his body was brought to Mr. *Colhoun*'s, where I went to ſee it. As ſoon as I came into the room, I aſked for the deceaſed's piſtols, and ſomebody (I really do not recollect who it was) brought them to me. They were a ſmall pair of ſcrew-barrel piſtols, with a brown wooden flat handle (*the piſtols ſhewn him*). Theſe are the piſtols. I unſcrued one of them, and found a ball ſticking in the barrel. I looked into the chamber, and could find no powder in it. I ſmelt it, and it did not appear to me by the ſmell that it had been lately fired out of. Then I examined the ſcrews and the cock very carefully, and could not perceive that any part of them were the leaſt tinged with powder. I then unſcrued the other piſtol, and examined it in the ſame manner I had done the firſt, but I found no ball in it, nor any the leaſt ſign of powder either in it or about it, except about two grains which I imagine had been bruiſed by the hammer; but I think if the piſtols had been fired out of lately, there would have been a ſtain of burnt powder left about the cock, which always remains after any fire-arm is diſcharged; and there was no ſuch ſtain on either of theſe piſtols.

After I had done with the piſtols, I examined the deceaſed's cloaths, and found upon the right flap of his coat a ſtain of dry powder, and the ſame upon the inſide of his great coat, on the right ſide.

Baker. I was at Mr. *Colhoun*'s on *Sunday* the nineteenth of *November* laſt, the morning that the deceaſed was killed, and upon enquiring for the deceaſed's piſtols, they were brought to me. Theſe are the piſtols: they were half cocked. I unſcrued one of them, and examined it very carefully, and there was neither powder nor ball in it, nor any where about it, except about two grains of powder which ſeemed to have been bruiſed by the hammer. I unſcrued the other, and examined it in the ſame manner, and found a ball ſticking in the barrel, but no powder at all either in the chamber, or any where elſe about it, nor there was not the leaſt ſtain of burnt powder either about the cock, or any where elſe, for I put my little finger into the barrel, and there came off upon my finger a yellowiſh ruſty dirt; whereas if the piſtols had been fired out of, there would have remained in the barrel a black moiſture, which would have come off on my finger: from all which circumſtances I am convinced the piſtols had not been fired out of. After I had done with the piſtols, I examined the deceaſed cloaths; and the right flap of his coat, and the inſide of his great coat were ſtained with dry powder, as Mr. *Pringle* has related.

Mr. Horne. I deſire judge *Herbert* may be called again.

Judge *Herbert* was called and appeared.

Mr. Horne. Will you pleaſe, Sir, to give the court and the jury an account of what you found in the pockets of the deceaſed?

Mr. Herbert. The morning that the body of the deceaſed was brought to Mr. *Colhoun*'s, I was there, and a little while after the body was laid down, I ſearched the deceaſed's pockets, and found in his breeches pockets three bullets.

Mr. Sol. Gen. May it pleaſe your honours, we ſhall call no more witneſſes, unleſs the priſoner makes it neceſſary by his defence; but ſhall reſt the charge here.

Mr. Preſident. Mr. *Barbot*, now is the time to make your defence. The king's council will call no more witneſſes, till they hear what you have to ſay.

Priſoner. May it pleaſe your honours, and you gentlemen of the jury,

Now that the council for the crown have gone through their evidence, ſuch as it is, and finiſhed their charge, I am to beg your ſerious attention, while I ſpeak to you in my defence.

To

To you, gentlemen of the jury, I shall chiefly address myself. You, gentlemen, are my principal judges on this unhappy occasion: judges which the wisdom of our ancestors have provided for every *British* subject, who is, or shall be, accused; lest the torrent of power should at any time prevail over justice, and malice and ill-will should injure and oppress the innocent. It is now, gentlemen, I have reason to think myself fortunate. I am by birth an *Englishman*, and, thereby, notwithstanding the implacable resentment of my powerful prosecutors, I cannot be denied the privilege of having twelve honest men to acquit me of the crime laid to my charge: for acquit me you must, if you, as I am sure you will, govern yourselves according to the evidence; since, notwithstanding the colourings which the genlemen for the crown have given to what they have produced as such, there cannot, even upon the footing on which it now stands, be more reason to adjudge me guilty, than any of you, gentlemen, who are now to pass upon me on my life or death.

Gentlemen, could I lay open my heart to you, and make the sentiments of my soul visible to your eyes, you would there see the most lively sorrow for the decease of the worthy gentleman, for whose death I stand here accused. I truly revere his memory. He was, I doubt not, all that the gentlemen concerned against me have said of him. But while I lament his untimely end, I cannot accuse myself for his death. Would the depriving me of life, on rumour and surmise, make atonement for the loss the world has sustained in him? surely no! And therefore, as this prosecution has been begun and carried on against me, not only with all imaginable heat, but every art has been used to deprive me of existence, I must, I will stand up in support of it, and, by preserving my life, thereby pave the way for vindicating my injured character, and deprive my prosecutors of the satisfaction of triumphing over my misfortunes.

Gentlemen, was I not afraid I should take up too much of your time, I could give you a detail of impositions and hardships that would shock you; the chief end of which was to deprive me of the opportunities and means of making a fair and just defence. My friends, gentlemen, have been spirited from me; they have been threatned, if they should dare to come near me; spies have been placed round the jail, to see if I was continually in irons or no, and if at any time I was taken out to dress: Mr. *Thompson* the marshal has been harrassed and reprimanded for giving me too much indulgence. I have been kept in total ignorance of all which I ought to have known; and, 'till this day, I was not made acquainted with the persons who were to be produced as evidence against me, much less with the purport of what they were to swear, lest I might have provided the means of invalidating any of their testimony. I have been deprived the privilege of writing privately to such persons as I had business with; even Mr. *Cooke* my sollicitor never approached me without a witness (intended at least) to our conversations; and the whole island has been made acquainted with the contents of a private letter I received from my father, on which some very ingenious comments have been made, with an intent, I suppose, to raise a popular odium against me, and to make you think, gentlemen, the life of a villain, such as I have been represented to be, was not worth your care, and that you might, upon the slightest surmise, condemn me to death, if not for the crime wherewith I am accused, yet for the general disrepute I might acquire by the success of these artful endeavours to vilify my reputation.

No wonder then, gentlemen, if that appears thus clouded. But I have such confidence, gentlemen of the jury, in your honour and integrity, that I am assured you will not be influenced by any of these artifices. Your breasts, I doubt not, are divested of all prejudice. I therefore promise myself you will attend calmly and deliberately to me, while I make some observations on the evidence you have heard delivered to you, and answer the arguments which have been advanced against me.

One of these witnesses, *Johnson*, gentlemen, has taken upon himself, you have heard, to swear most positively he saw me on *Sunday* the nineteenth of *November* last in a canoo, rowing towards *Nevis*, with some other particulars. Yet is it not strange that this man, on the very day on which he thus pretends to have seen me, when the fact must have been supposed to be most recent in his memory, before the coroner's inquest, on being to this purpose particularly interrogated by Mr. *Julius*, declared he could not positively swear it was me he saw, but only believed so? His reason he gave for knowing me, at the same time shewing his malice against me, on account of my being the instrument of putting him twice in jail, which, however, I have no recollection of. It is most plain, if he saw any canoo at all, he judged me to be in such canoo, from the reports he had heard on shore; and mad with the desire of revenge, he hasted to the coroner's inquest, with intent to do me all the prejudice in his power. Yet there his conscience pricked him, and, when made to recollect himself, could say no more than that he believed he saw me. After this, and from the character you have heard of him, can any credit be given to what he has sworn? I am well assured, gentlemen, you will give it none.

As to the evidence of *Patience Dorset*, she swears, gentlemen, positively, that the words which she is pleased to have heard me say, were spoken by me on the tenth of *November* in the morning, being the king's birth-day, at Mr. *M^c.Cabée*'s tavern. Now, gentlemen, I shall prove to you beyond contradiction, I was all that day, and for four preceding days, and for ten days after, at *Nevis*. And particularly on the tenth of *November*, I was for the whole day in a part of *Nevis* the farthest removed from this island, at least seven miles from the town, and did not in the least dream of coming down here, having business of importance to transact there, which required my presence. And when I have done this, I hope I shall have effectually destroyed this mighty fabrick, which the council for the crown have taken such infinite pains to raise up. All the rest of the evidence have not the least, the most distant relation to the crime wherewith I

am

am charged, conſiſting only of my motions from place to place, and of ſome trifling tranſactions, none of which ſhew any thing like my harbouring deſigns to the prejudice of any one, much leſs of Mr. *Mills*; againſt whom there is not the leaſt appearance I could entertain any anger. I deſire Mrs. *Lowman* may be called.

Mrs. *Frances Lowman* ſworn.

Priſ. Pleaſe to inform the court, Madam, whether, I was or was not at *Nevis* on the tenth of *November* laſt.

Lowman. Mr. *Barbot* came to my father's, Mr. *George Webbe*'s ſenior, on the eighth of *November* laſt; he dined and lodged there; and lodged there the next night alſo. On the tenth he breakfaſted there; and after breakfaſt, he and Mr. *William Daniel* walked out together, and returned in about two hours; and I left him at my father's, at about one o'clock, juſt going to ſit down to dinner. Dinner was upon table, and I went away to my brother *George Webbe*'s, where I dined in company with Mr. *William Herbert*.

Mr. Sol. Gen. You ſay the priſoner and Mr. *Daniel* took a walk after breakfaſt on the tenth of *November*; pray where did they go to?

Lowman. I believe they went to Mr. *Ottley*'s.

Mr. Sol. Gen. They were abſent for two hours, you ſay; at what time in the morning did they go out?

Lowman. They went out at about nine o'clock, and returned in about two hours.

Mr. Sol. Gen. Pray, Madam, when were you firſt applied to, to endeavour to recollect where the priſoner was on the tenth of *November*?

Lowman. I was firſt applied to the day before yeſterday, and I am poſitive he was at my father's on the tenth of *November*.

Priſ. I pray Mrs. *Ottley* may be ſworn.

Mrs. *Lucretia Ottley* ſworn.

Priſ. Do not you recollect, Madam, that I came to your houſe with Mr. *William Daniel*, on the king's birth-day in the morning?

Ottley. I do remember that Mr. *Daniel* and you came to my houſe one morning after the ſale of *Bridgwater*'s eſtate, but I cannot poſitively ſay what day it was, though I remember it was in the ſame week that *Bridgwater*'s eſtate was ſold.

Mr. Sol. Gen. Was the priſoner at your houſe any more than one morning?

Ottley. No, he never was there more than once to my knowledge.

Priſ. I pray Mr. *Ottley* may be alſo ſworn.

Mr. *Thomas Ottley* ſworn.

Priſ. Will you pleaſe, Sir, to inform the court on what day it was I came to your houſe with Mr. *William Daniel*?

Ottley. I remember that the priſoner did come to my houſe one morning with Mr. *Daniel*, but I neither remember on what day of the week or month it was.

Priſ. I deſire that Mr. *Joſiah Webbe*, the ſon of Mr. *George Webbe* ſenior, may be ſworn.

Mr. *Joſiah Webbe* ſworn.

Priſ. Pray, Sir, be kind enough to inform the court, whether I was not at your father's on the tenth of *November* laſt.

Webbe. I am not certain, but I think Mr. *Barbot* dined at my father's on the tenth of laſt *November*. I remember that he and Mr. *Daniel* dined at my father's on *Wedneſday* the eighth of *November*, and lay there at night, and they ſtayed all next day, and ſpent moſt part of the day in playing at backgammon, and lay there again that night; and, I cannot be poſitive, but, to the beſt of my remembrance, Mr. *Barbot* dined at my father's on the tenth. I ſtayed at home that day to keep Mr. *Barbot* company, and I am almoſt ſure it was the tenth.

Mr. Sol. Gen. When were you firſt deſired to recollect this?

Webbe. The day before yeſterday.

Priſ. I deſire Mrs. *Lowman* may be called again.

Mrs. *Lowman* called up again.

Priſ. Pray, Madam, are you not very poſitive I was at your father's on the tenth of *November*?

Lowman. Yes, Sir, I am poſitive that I left you at my father's on the tenth of *November*, and I dined that day at my brother *George Webbe*'s, in company with Mr. *William Herbert*.

Mrs. Ottley. I now recollect very well that it was on *Thurſday* the ninth of *November*, that Mr. *Barbot* came to my houſe with Mr. *Daniel*. Miſs *Nanny Herbert* was at my houſe at the ſame time. She is now here, and has mentioned ſome particular circumſtances, that make me recollect the thing perfectly well.

Mr. Sol. Gen. I deſire Miſs *Herbert* may be ſworn.

Miſs *Anne Herbert* the elder, ſworn.

Mr. Sol. Gen. Pleaſe to declare to the court on what day it was the priſoner went with Mr. *Daniel* to Mr. *Ottley*'s.

Herbert. The day after the ſale of *Bridgwater*'s eſtate, I dined in town at my brother's with Mrs. *Ottley*, and we ſaw Mr. *Daniel* there, and Mrs. *Ottley* invited him to her houſe in the country: accordingly he came the next morning after breakfaſt with Mr. *Barbot*: they ſtaid about an hour and an half, and went away again.

Mr. Sol. Gen. Are you ſure it was on the ninth of *November* that the priſoner and Mr. *Daniel* went to Mr. *Ottley*'s?

Herbert. Yes, I am ſure it was on the ninth; for it was on the ſecond day after the ſale of *Bridgwater*'s eſtate.

Priſ. I deſire Mr. *William Herbert* may be ſworn.

Mr. *William Herbert* ſworn.

Priſ. Pleaſe to declare to the court, Sir, whether you did not dine in company with Mrs. *Lowman*, at Mr. *George Webbe*'s junior, on the tenth of *November* laſt.

Herbert. I remember dining at young Mr. *George Webbe*'s, the *Thurſday* after the ſale of *Bridgwater*'s eſtate, in company with Mrs. *Lowman*; and the next day I dined at Mr *Cole*'s. As I was riding to Mr. *Cole*'s, I heard the guns fire,

fire, and on asking the reaſon of their firing, I was told it was the king's birth-day: I remember particularly it was the king's birth-day; for after dinner, I ſaid to Mr. *Pemberton*, who was one of the company, as you are the oldeſt man in company, begin with a bumper to his majeſty's health.

Mr. Sol. Gen. Are you ſure it was on the king's birth-day you dined at Mr. *Cole*'s?

Herbert. Yes, I am ſure it was. Mr. *James Brodbelt* is now in court, he was one of the company.

Mr. Sol. Gen. Can you tell how many guns you heard fired on the king's birth-day?

Herbert. I think I heard fifteen, but Mr. *Weekes* the gunner is in court, he can tell poſitively how many he fired.

Mr. *William Weekes* ſworn.

Mr. Sol. Gen. Do you remember firing any guns on the king's birth-day?

Weekes. Yes, I remember to have fired fifteen.

Mr. Sol. Gen. Did you fire any more or leſs than that number?

Weekes. No. I fired exactly fifteen.

Priſ. I pray *John Cornelius* may be ſworn.

John Cornelius (a free negro) ſworn.

Priſ. Do you remember on what day it was *Bridgwater*'s eſtate was ſold?

Cornelius. It was on *Tueſday* the ſeventh of *November* laſt. I was at work at Mr. *George Webbe*'s that day, and the *Thurſday* after I ſaw Mr. *Barbot* at old Mr. *Webbe*'s: he and Mr. *Daniel* went out in the morning to Mr. *Ottley*'s, as I was told, and returned in about two hours; and the next day, which was the king's birth-day, Mr. *Barbot* dined at old Mr. *Webbe*'s.

Mr. Sol. Gen. Did you hear any guns fire that day?

Cornelius. No, I heard none.

Mr. Sol. Gen. Was you deſired by any body to recollect this?

Cornelius. No.

Mr. Sol. Gen. Did no body inſtruct you to ſay it?

Cornelius No body at all.

Mr. *James Brodbelt* ſworn.

Mr. Sol. Gen. Pleaſe to declare to the court where you dined on the king's birth-day.

Brodbelt. I dined at Mr. *Cole*'s on the king's birth-day, with Mr. *William Herbert*, Mr. *Pemberton*, Mr. *Paris*, and ſome other gentlemen. The fort-guns fired on account of the day, and I remember Mr. *Herbert* propoſed to Mr. *Pemberton*, drinking the king's health in a bumper, which we all did.

Priſ. I deſire *Samuel Lawrence* may be ſworn.

Samuel Lawrence ſworn.

Priſ. Do you remember when *Bridgwater*'s eſtate was ſold?

Lawrence. I do not remember the day.

Priſ. Do not you remember the day I came to old Mr. *Webbe*'s?

Lawrence. No.

Priſ. Do not you know how long I ſtayed there?

Lawrence. Indeed I cannot tell.

Priſ. Do you remember the day I wrote a note for old Mr. *Webbe* to ſend to Mr. *Cradock* for corn?

Lawrence. I do remember you wrote a note to Mr. *Cradock* for corn for Mr. *Webbe*, but I do not recollect on what day it was.

Priſ. Do you not remember I dined at old Mr. *Webbe*'s the day I wrote that note?

Lawrence. Yes, you did dine there the day you wrote the note, but I do not remember what day that was.

Priſ. I pray Mr. *Joſiah Webbe* (doctor *Webbe*'s brother) may be ſworn.

Mr. *Joſiah Webbe* ſworn.

Priſ. Pray, Sir, inform the court whether I was not at your houſe on the king's birth-day, and whether I was not ſent for, while I was there, to make Mrs. *Hickman*'s will?

Webbe. I remember Mr. *Barbot* came to my houſe one afternoon ſoon after the ſale of *Bridgwater*'s eſtate, and while I was there, a meſſenger came from Mrs. *Hickman* to him, to deſire he would go and make her will.

Priſ. Was it not on the king's birth-day?

Webbe. It was one day after the ſale of *Bridgwater*'s eſtate, but I am not certain what day it was.

Priſ. I deſire Mrs. *Daſent* may be ſworn.

Mrs. *Frances Daſent* ſworn.

Priſ. Pleaſe to declare to the court, Madam, on what day it was you ſent for me to make your mother's (Mrs. *Hickman*'s) will.

Daſent. I ſent for Mr. *Barbot* to make my mother's will, and I remember he came and made her will, but I cannot be certain what day it was.

Priſ. I deſire Miſs *Jenny Herbert* may be ſworn.

Miſs *Jane Herbert* ſworn.

Priſ. Do you remember being at Mrs. *Hickman*'s when ſhe was ill?

Herbert. Yes.

Priſ. Do you remember my making her will?

Herbert. Yes, Miſs *Nancy Herbert* and myſelf were witneſſes to it.

Priſ. Do you recollect when *Bridgwater*'s eſtate was ſold?

Herbert. Yes, it was on *Tueſday* the ſeventh of laſt *November*.

Priſ. How long after that was it that I made Mrs. *Hickman*'s will?

Herbert. I am not certain whether it was the *Thurſday* or *Friday* after, but *I believe* it was the *Friday*.

Priſ. It was the *Friday* after?

Herbert. I think it was, but I am not poſitive whether it was the *Thurſday* or *Friday*.

Priſ. Did you ſtay at Mrs. *Hickman*'s that night?

Herbert. No.

Priſ. Do you know whether young Mr. *Payne* came there the day following?

Herbert. I cannot tell whether he did or no.

Priſ. I pray Mr. *Sommers Payne* junior, may be ſworn.

Mr. *Sommers Payne* junior, ſworn.

Priſ. Do you remember the day that I was at Mrs. *Hickman*'s?

Payne. I remember ſeeing you there, but I cannot tell on what particular day it was.

Priſ. I pray Miſs *Nancy Herbert* may be ſworn.

Miſs *Anne Herbert*, the younger, ſworn.

Priſ. Do you remember what day it was I was at Mrs. *Hickman*'s to make her will?

Herbert. No, I do not recollect the day.

Priſ. Do not you remember to have heard of a ball being at *Saint Kitt*'s on the king's birth-day.

Herbert. I remember to have heard there was to be a ball at *Saint Kitt*'s, but I cannot tell on what day.

Priſ. Had you no converſation with any young ladies of your acquaintance about the ball?

Herbert. Yes, I believe I might have talked about it, but I do not remember the day.

Priſ. I deſire Mr. *Julius* may be ſworn.

Mr. *William Julius* ſworn.

Priſ. Mr. *Julius*, you were one of the coroner's inqueſt, pray what did *Johnſon* ſwear before the inqueſt?

Julius. When he came before the inqueſt, I aſked him if it was Mr. *Barbot* that he ſaw in the canoo? he ſaid, he believed it was, but he could not ſwear poſitively to him, for he was a muſket-ſhot off.

Priſ. I pray *Manſell Wilkes* may be ſworn.

Manſell Wilkes ſworn.

Mr. Frye. Do you know *Johnſon?*

Wilkes. Yes, I know him very well.

Mr. Frye. What character does he bear?

Mr. Sol. Gen. You are to take notice that you are to ſpeak to the character of the man in general, and not charge him with any particular fact; for he is not come here prepared to defend himſelf againſt any particular charge.

Wilkes. Since I have known him he has always born a bad character.

Mr. Frye. Has he been always looked upon as a man of infamous reputation?

Wilkes. Yes, he is reckoned a bad man.

Mr. Preſident. Have you any more witneſſes to examine, Mr. *Barbot?*

Priſ. No, Sir.

Mr. Sol. Gen. May it pleaſe your honours, ſince the priſoner has attempted to prove that he was at *Nevis* on the tenth of *November*, in order to invalidate the teſtimony of *Patience Dorſet*; we beg leave to produce ſome further evidence of his being actually on this iſland on that day. Call *Martha Scoaper*, *Mary Sutton*, and *Mary Cockade*, (a free mulatto;) *who appeared and were ſworn.*

Mr. Sol. Gen. Mrs. *Scoaper*, do you know the priſoner at the bar?

Scoaper. Yes, Sir, I know Mr. *Barbot* very well.

Mr. Sol. Gen. How long have you known him?

Scoaper. I have known him a great while; he is my near neighbour.

Mr. Sol. Gen. Do you remember ſeeing him on this iſland on the tenth of *November* laſt?

Scoaper. I do not know what day of the month it was, but I am almoſt ſure I ſaw Mr. *Barbot* here on the king's birth-day. To the beſt of my remembrance I ſaw him paſs by my houſe in the forenoon, and his boy came to my houſe that morning to beg ſome water.

Mr. Sol. Gen. Do you know by any particular circumſtance that it was on the king's birth-day you ſaw the priſoner?

Scoaper. It was the day that there was a great ball at *Manaſſeh Williams*'s. I was at the ball myſelf.

Mr. Sol. Gen. That was on the king's birth-day. Mrs. *Sutton*, do you know the priſoner at the bar?

Sutton. Yes, I know him very well.

Mr. Sol. Gen. Pleaſe to inform the court and the jury whether you ſaw him here on the king's birth-day.

Sutton. Between eleven and twelve o'clock in the forenoon, on the king's birth-day, as I was ſitting in my houſe, I ſaw Mr. *Barbot* coming down by Mr. *Bunyard*'s houſe, and he turned down the alley that leads to Mrs. *Philips*'s.

Mr. Sol. Gen. Do you remember how he was dreſſed.

Sutton. He had on a white coat, a green waiſtcoat, and a ſilver laced hat flapt.

Mr. Sol. Gen. Are you ſure it was on the king's birth-day you ſaw the priſoner?

Sutton. Yes, I am ſure it was on the king's birth-day.

Mr. Sol. Gen. Mrs. *Cockade*, do you know the priſoner at the bar?

Cockade. Yes, Sir, I know him very well.

Mr. Sol. Gen. Pray inform the court and the jury whether you ſaw him here on the king's birth-day.

Cockade. Mrs. *M'.Cabée* ſent for me on the king's birth-day to help her; for they were to provide an entertainment for a great deal of company: and while I was in the publick room below, Mr. *Barbot* came in, and I heard him aſk a man whom I did not know, whether there was a good deal of company up ſtairs.

Mr. Sol. Gen. Are you ſure it was on the king's birth-day you heard him ſay this?

Cockade. Yes, I am ſure it was.

Mr. Sol. Gen. May it pleaſe your honours, we have gone through all our evidence. We could produce many more witneſſes to prove the priſoner's being actually on this iſland on the tenth of *November*, but we think thoſe that have been already examined ſufficient to eſtabliſh that fact, notwithſtanding what has been ſworn to by Mrs. *Lowman* and *Cornelius*, who are the only poſitive witneſſes to the priſoner's being at *Nevis* on the tenth of *November*; and the firſt of them (Mrs. *Lowman*) founds her evidence on two circumſtances, in both of which ſhe ſtands flatly contradicted. The firſt, that of the priſoner's going with Mr. *Daniel* to Mr. *Ottley*'s on the king's birth-day in the morning; and the other, that of her dining on the ſame day at her brother *George Webbe*'s, in company with Mr. *William*

liam Herbert. Now, your honours and the gentlemen of the jury muſt have obſerved that, in the firſt of theſe circumſtances, Mrs. *Lowman* ſtands contradicted by the evidence of Mrs. *Ottley* and Miſs *Anne Herbert*, who have both poſitively ſworn that it was on the ninth of *November*, the day preceding the king's birth-day, that the priſoner and *Daniel* were at Mr. *Ottley*'s; and in the other ſhe is alſo contradicted by Mr. *William Herbert*, who has likewiſe poſitively ſworn, that it was on the ninth of *November* he dined at Mr. *George Webbe*'s junior, in company with Mrs. *Lowman*, and that on the tenth he dined at Mr. *Cole*'s. And this evidence of Mr. *Herbert* is corroborated by that of Mr. *James Brodbelt*.

Mr. Preſident. Mr. *Barbot*, go on with your defence.

Here Mr. Frye *got up, and handed ſome papers to the priſoner, which Mr.* Horne, *one of the council for the king, obſerving, addreſſed the court in this manner:*

Mr. Horne. May it pleaſe your honours, I beg Mr. *Frye* may not be allowed to do this. He is now giving papers to the priſoner to aſſiſt him in his defence.

Mr. *Frye*. They are nothing more than ſimple notes of the evidence, which I took, in order to help his memory, when he comes to make his defence; and one or two caſes that I have writ down for him.

Mr. Sol. Gen. It is what they have not a right to; but it is no great matter. You may give him the papers.

Mr. Frye. Here, Mr. *Barbot*, you are to read from this place to this (*pointing with his finger.*)

Priſ. May it pleaſe your honours, the firſt witneſs produced againſt me, in order to prove my having had ſome reſentment againſt the deceaſed, is Mr. *Carew*, who, as you muſt have obſerved, ſays no more, than that on the day *Bridgwater*'s eſtate was ſold at *Nevis*, he heard me ſay to the deceaſed, *that I expected to be treated like a gentleman*. If I did ſay theſe words, I aſſure you, gentlemen, they made no impreſſion at all on me, for I have not the leaſt recollection of having ſaid any thing like this to the deceaſed. But, admitting I had; does the ſaying to a gentleman, that I expect to be well treated, or treated like a gentleman by him, imply any kind of malice, or reſentment, againſt that gentleman? ſurely no!

Mr. *Thomas Mills* was the next witneſs produced on this occaſion. He agrees with Mr. *Carew* in the words that paſſed at the ſale of *Bridgwater*'s eſtate. But, gentlemen, was there any thing offenſive, or malicious, in my anſwer to the deceaſed; or can any thing be collected from thence, to ſhew that I had any reſentment againſt him? I think not, and I am confident you will think ſo too.

Mr. *Armour* has ſworn to a converſation that, he ſays, paſt between him and myſelf, ſome time before the ſale of *Bridgwater*'s eſtate. He ſwears he heard me ſay, Mr. *Mills* had treated me in a manner never to be forgiven. This, I confeſs, aſtoniſhes me; for I have not the leaſt remembrance of it. And it is indeed ſtrange and very improbable, that I ſhould throw out ſuch expreſſions concerning a gentleman, againſt whom I never had any reaſon to conceive the leaſt anger or reſentment. It is probable I might, at the time Mr. *Armour* ſays he joined company with me, have been talking about Mr. *James Daſent*'s affairs, and might have ſaid that Mr. *Mills*'s behaviour to Mr. *Daſent* ought never to be forgotten; for I well knew that Mr. *Mills* had been a great friend to Mr. *Daſent*. It is therefore probable, I ſay, that Mr. *Armour* might have miſunderſtood me. And indeed he muſt have been miſtaken, for I am certain I never uttered the words he has ſworn to. Beſides, it is obſervable that Mr. *Armour* does not ſwear which of the *Mills*'s I ſpoke of. He believes, indeed, it was the deceaſed, and for no other reaſon than becauſe I did not uſe any chriſtian-name by way of diſtinction. I might, gentlemen, for any thing Mr. *Armour* knew, have meant Mr. *William Mills*, or Mr. *Thomas Mills*.

The evidence of *Patience Dorſet*, I confeſs, is more ſurprizing than any. She has boldly ſworn, that ſhe heard me throw out a menace at a publick tavern in this town on the king's birth-day, in company with two men, whom ſhe ſays ſhe did not know, nor did ſhe hear any of the converſation previous or ſubſequent to this menace. Is it not very ſtrange, that this woman ſhould only hear that particular part of the converſation and no other, and not be able to recollect who the people were I was talking to? Beſides, admitting I had had any reſentment againſt Mr. *Mills*, it would have betrayed great weakneſs in me to have thrown out ſuch a menace. But, gentlemen of the jury, I am confident this piece of evidence will have no weight with you, as it has been ſufficiently proved by three witneſſes, (one of them a lady, and the other a gentleman, of undoubted characters, and the third a very honeſt man) that at the time *Dorſet* heard me uſe this threat ſhe has ſworn to, I was actually at the iſland of *Nevis*. This, I think, gentlemen, fully ſufficient to invalidate her evidence, and I make no doubt will have it's proper weight with you.

Doctor *James Webbe* was called next on the part of the crown. Between the *doctor* and my ſelf, there has for a long time paſt, and ſtill does, ſubſiſt a very great intimacy; inſomuch, that if I had ever had any quarrel with, or reſentment againſt, the unhappy gentleman deceaſed, it is extremely probable I ſhould have communicated it to him. And yet, gentlemen, you have heard the *doctor* poſitively ſwear, that ſo far from his being acquainted with my having any difference with the deceaſed, or any intention to fight him, that he never knew or even ſuſpected any thing of the kind.

It has been alſo given in evidence to your honours, and the gentlemen of the jury, that on the eighteenth of *November* at night, I went to bed at doctor *Webbe*'s houſe about nine o'clock, and doctor *Webbe* ſwears, that about one in the morning, as he was paſſing through the hall, he ſpoke to me. This plainly proves, I was at that time at doctor *Webbe*'s houſe in *Nevis*. It has been alſo proved, that I was at doctor *Webbe*'s

at

at nine o'clock in the morning of the nineteenth, the day on which the deceaſed is ſuppoſed to have been killed; and it is obſervable, that through all the evidence that has been produced againſt me, there has not been one witneſs who could ſwear that I was even at *Frigate-Bay that morning*; and I do take upon me to ſay, it was incumbent on the council for the king to prove, by ſome poſitive witneſs, that I was that morning at *Frigate-Bay*. They have endeavoured indeed, by preſumptive evidence, to prove my being there, and for that purpoſe *John M^c.Kenley* and *Johnſon* have been examined. *M^c.Kenley* ſwears the deceaſed's negro boy *Coomy* told him, I had killed his maſter, and that on this he ran to the bay, and ſaw a canoo rowing from the ſhore, with a perſon in white ſitting in the ſtern. I beg leave to make two obſervations on *M^c.Kenley*'s evidence. Firſt, that his information was from a ſlave, who, by the laws of his country, would have been an incompetent witneſs had he been produced as ſuch, and conſequently any hearſay from him muſt be illegal, and ought to have no weight with the jury, Add to this too, the poſſibility that *Coomy* might have been bribed to fix the murder on me. And next, that *M^c.Kenley* himſelf cannot poſitively ſay that it was even a white perſon that he ſaw ſitting in the ſtern of the canoo. Is it not therefore unjuſt to conclude that I was the perſon?

As to *Johnſon*'s evidence, I beg leave to add only one obſervation to what I have already ſaid on that matter. It has appeared in evidence to you, gentlemen of the jury, that he is a man of a very bad character, and, had I had timely notice of his being a witneſs againſt me, I could have had a copy of the record of his conviction for petty larceny from *Montſerrat*, which would have proved him beyond all doubt an infamous perſon. But although I have been ſo unfortunate as not to be able to produce this record, yet from what you have heard of this man's character, I am perſuaded you, gentlemen of the jury, will pay no regard to what he has ſworn.

The council for the king, to prove this fact upon me, have endeavoured, by a number of witneſſes, to trace me, as they are pleaſed to call it, from place to place. This kind of evidence, I hope, will have no weight with you, gentlemen of the jury, as it is at beſt but very light preſumptive evidence, and as it is abſolutely neceſſary to prove poſitively that I committed the fact. Great ſtreſs has been laid alſo on my exerciſing the piſtols at Mrs. *Daſent*'s. It has been proved to your honours and the jury, by doctor *Webbe*, that this was merely accidental, and that after we had done with the piſtols, they were cleaned and put up by a boy of Mrs. *Daſent*'s. Is it not ſtrange that this piece of evidence ſhould be made uſe of to prove the murder upon me? What had my exerciſing theſe piſtols (which I did a week before merely for my amuſement) to do with the killing Mr. *Mills*? Did no other perſon ever fire at a mark with piſtols? Now, gentlemen of the jury, if it had happened that a man was found dead of the wound of a ſword, and one of you had been exerciſing a few days before a caſe of foils; might it not with equal juſtice be ſaid that you killed that man?

For my being ſeen to land out of a canoo, I am ſure, gentlemen, that can be no proof of my having been at *Frigate-Bay*. Beſides, the witneſſes themſelves cannot take upon them to ſwear I came from *Frigate-Bay*. For any thing they knew, I might have been a fiſhing; and ſurely that is an innocent action. Was no other perſon ſeen that morning in a canoo but myſelf?

There has been no kind of proof that I had any piſtols with me, or that my boy had any. They have indeed now produced a caſe of piſtols which they ſuppoſe I uſed that morning; but I beg leave to obſerve, that theſe very piſtols were found by doctor *Webbe*, under the bed at Mrs. *Daſent*'s, in a pair of holſter caps; and it does not appear, from any of the evidence, that they had been lately uſed.

I make no doubt the council for the king will lay great ſtreſs on the evidence that has been given of my having executed a paper at *O Donnell*'s, which they have endeavoured to prove was my will. Is it not the duty of every man, as well as a ſatisfaction to him, to make a will? and is he not at liberty to make it when and where he pleaſes? Beſides, I had very good reaſons for making a will, which were to ſecure Mr. *Jacob Saunders* for indorſing my bills, as I intended going to *England* in captain *Fleming*, who was to ſail in a few days.

Mr. Juſtice Loſack. Mr. *Barbot*, give me leave to interrupt you. I apprehend you are only waſting your time, and doing yourſelf very little ſervice, by all this. Would it not be much more for your advantage, to prove where you was from the time you went to bed at doctor *Webbe*'s the night preceding the murder, to the time you were ſeen to land at *Nevis*?

Priſ. That, Sir, would be a hardſhip indeed. I ſubmit it to you, gentlemen of the jury, whether it would not be very difficult for any of you to prove where you were on any particular night, from nine to ſix in the morning; and, on failure of ſuch proof, to be ſuppoſed guilty of murder? Beſides, may it pleaſe your honours, I humbly apprehend that in this caſe the *onus probandi* lies on the crown, and that they muſt firſt prove an *ibi*, before I am obliged to prove an *alibi*. But admitting I had been out the night preceding the murder, ought it from thence to be concluded, that I committed the murder? Was no other perſon out that night but myſelf?

Gentlemen of the jury, it has been ſaid to you, that preſumptive evidence is ſufficient to convict a man of murder, and I expect the council for the king will labour to prove this point. But I beg leave to aſſert, that preſumptive evidence is by no means ſufficient, and that nothing but poſitive proof ought to be admitted to convict a man of a crime where his life is at ſtake. It would be of the moſt dangerous conſequence to admit of preſumptive evidence in ſuch caſes; for an innocent man might ſuffer for a crime he never was guilty of. I have ſome authorities in my hand, to ſhew how extremely cautious juries ought to be, in finding a man guilty. on any but the cleareſt and fulleſt proof. *Coke Inſt.*

" An uncle was correcting his nephew, and
" the boy was heard to cry out, O Lord,
" uncle,

" uncle, do'nt kill me. The boy immediately after abſented himſelf. The neighbours who had heard the outcry, on miſſing the boy, ſuſpected the uncle had killed him. The uncle, finding he was ſuſpected to have murdered his nephew, procured a boy very like his nephew to perſonate him. But it being ſoon diſcovered that this was not his real nephew, the uncle was thereupon apprehended, tried for the murder, and convicted. Some time after this the nephew appeared."

Another caſe I have, gentlemen, to the ſame point. I do not immediately recollect the book it is in, but the caſe is this.

" A man was found dead in a field. Another man happened to paſs by and ſee him, and went and told two perſons of it. Theſe two perſons, ſuſpecting him to be the murderer, carried him before a Magiſtrate. He was indicted for the murder; and one of the jury that tried him, contrary to the opinion of the other eleven, and of the court alſo, would not find him guilty. Upon this man's ſtanding out a long time, and abſolutely refuſing to agree with the reſt of the jury, they were called into court, and upon the judge's asking this man his reaſon for refuſing to find the priſoner guilty, he honeſty confeſſed that he himſelf had killed the man, and that the priſoner at the bar was perfectly innocent."

From hence it appears, gentlemen of the jury, that you ought not to be determined by circumſtantial evidence. If former juries have taken upon themſelves to judge ſeverely from preſumptive evidence, that ſhould be no rule, no example, for you.

I beg leave to trouble your honours, and the gentlemen of the jury, with one caſe more, to ſhew the neceſſity of having poſitive evidence to convict a man on a tryal of this ſort.

" It happened at *Montſerrat*, that one captain *Watts* was indicted for killing of one *Oulds*. A woman, who was the only evidence, ſwore ſhe heard the claſhing of ſwords, and ſaw captain *Watts* draw a ſword out of *Oulds*'s body; but becauſe ſhe could not ſwear that ſhe ſaw *Watts* thruſt the ſword into his body, the jury acquitted him."

Common fame, gentlemen, I am perſuaded will have no weight with you at all. You muſt all have been ſenſible at times, how report is apt to ſpeak untruly. And, in the preſent caſe, every art has been tried to raiſe it to my prejudice. You are ſworn to judge by the evidence which is delivered to you, not by what you have heard out of doors. If the evidence is favourable, you muſt in your conſciences judge ſo; otherwiſe you introduce a precedent for the greateſt evils.

Gentlemen, if you examine the whole tenor of my behaviour for a few days which preceded this unhappy accident, until my commitment, you will find me ſolely employed about doctor *Webbe*'s and Mrs. *Daſent*'s affairs, and preparing for a voyage to *Europe*; and for the moments of receſs from buſineſs, only employed in paſſing my time agreeably among my Friends. The very night before poor Mr. *Mills*'s death, my behaviour was ſuch, as ſhewed I harboured no miſchievous intentions. And can it be ſuppoſed that, if I had been conſcious of the crime laid to my charge, I ſhould have dined at colonel *Webbe*'s (the houſe where I always dined on a *Sunday* when at *Nevis*) the very day on which the murder was committed, and behaved there in my uſual manner? My circumſtances were ſuch as might have made the means of eſcaping very eaſy to me, had I been guilty of ſo weighty a crime as that I am accuſed of.

Upon the whole, if any preſumption can be drawn from evidence like this, it muſt be favourable for me, as they do moſt effectually demonſtrate the whole of my behaviour to have been moſt innocent and inoffenſive. I ſhall juſt beg leave to caution ye, gentlemen, againſt any arguments that have, or may be made uſe of, to influence your paſſions on this occaſion. Much pains have been taken to ſtir up in your breaſts ſentiments of rage and indignation againſt me, and to make me appear guilty in your eyes, though I could by no means be proved ſo.

But, gentlemen, I know you are not to be blinded by ſubtleties of this kind. It is not rhetorical flouriſhes will move you on this occaſion to lay down my life a ſacrifice to my proſecutors, however powerful they may be. You are, gentlemen, a jury, judges upon your oaths of matters of fact according to evidence; and, from the perſonal knowledge I have of every one of you, I am perſuaded nothing but full and demonſtrative proof will any ways induce you to condemn me: not diſtant arguments that amount hardly to a poſſibilily; and when they have an equal poſſibility, that any of the perſons in this court may be the guilty perſon, and not me. For the preſumption, I am ſure that is altogether in my favour.

I ſhall ſay no more to you on this occaſion, but commit myſelf, gentlemen, to your judgments, not doubting a happy iſſue. May God Almighty incline your hearts in my favour. On his protection I depend; and to him be all honour and glory henceforth and for ever. *Amen.*

Mr. Sol. Gen. May it pleaſe your honours,

I ſhall beg the indulgence of a few words, in reply to the priſoner's defence. I ſhall not make any recapitulation of the whole evidence; both as the tryal has been drawn out into ſo very great a length, and as that will be done from the bench; but confine myſelf to the making a few obſervations which I think neceſſary, on what has fallen from the priſoner in the courſe of his defence: in which too I ſhall not be long; for indeed the priſoner has ſaved me the neceſſity of giving you much trouble, by the extreme weakneſs of his defence; which was indeed ſo very weak, that his very defence itſelf ſeems a proof of his guilt. For has he invalidated any part of the evidence againſt him? has he diſproved a

ſingle fact? nay, has he even attempted to do it? ſave in one inſtance only, where it was not without concern I ſaw him endeavouring to cover one crime by another, in offering, by a palpable perjury, to take away the force of the evidence of *Patience Dorſet*; by getting it proved, that he was not on this iſland at the time when ſhe ſwore ſhe heard him ſpeak the particular words ſhe gave an account of. Could he indeed have fairly and honeſtly diſproved her, it might have been of no ſmall avail to him: but by unſucceſſfully attempting to do it, he has only the more eſtabliſhed the truth of her teſtimony; and the very attempt itſelf ſhews how ſtrongly he felt the weight of it lie upon him; and amounts to a ſort of confeſſion of his crime, in labouring, by ſo undue means, to deſtroy an evidence which only the conſciouſneſs of his guilt could make him ſo ſtrenuous to invalidate.

But the main of his defence ſeems to lie in this, that the evidence againſt him is only circumſtantial; and therefore, however ſtrong, ought not to avail to convict him, without abſolute and poſitive proof of his committing the fact, by perſons who ſaw him do it. I indeed expected he would fly to this miſerable refuge, the laſt reſort of a guilty man, oppreſt by the weight of conviction, and born down by the force of the plaineſt evidence againſt him. I ſhall therefore beg to be a little particular to this point; not only as being what the priſoner ſeems to have reſted the whole force of his defence upon, and placed all his hopes of an acquittal in; but as I am ſenſible great pains have been alſo taken to inculcate this doctrine abroad: a doctrine the falſeſt and moſt dangerous that can be broached, and which plainly contradicts all our reaſon and experience on this matter. For

Not only, according to this doctrine, hardly any criminal could ever be convicted at all; but moreover, I am bold to ſay, out of all thoſe that have been ſo, by much the greater part were convicted on circumſtantial evidence.

So far from being none, or even bad evidence, it has ever been allowed that, for the lights it does give, it is the beſt and ſureſt of all kind whatſoever, and the leaſt likely to deceive and miſlead.

A man may lye, but, as an ingenious gentleman ſaid this morning, facts cannot lye. A well invented tale may be told and ſtood to by a wicked and daring witneſs, in a manner that he knows it is impoſſible for him to be detected in; but a variety of facts of ſeveral kinds, all collected from different and diſtant perſons, places and times, with an apparent impoſſibility of combination or confederacy, all independant of each other; and with no other connexion or agreement between them, but what ariſes from their bearing from different and diſtant points to the ſame center of truth; theſe can never miſlead the judgment, or impoſe upon the belief; but juſtify and confirm each other, and are the ſureſt and moſt unerring guides to conduct to truth.

They who affirm, that circumſtantial evidence alone cannot be ſufficient to convict, muſt not only be greatly unuſed to the hearing or reading of tryals; but muſt alſo be perfectly ignorant of the very nature of a tryal, and what it is. For what is a tryal, but to hear, examine, and weigh all that is offered on either part; and then from the whole to draw out, or (as the well known term is) to *find* the truth?

Is it not the conſtant and univerſal practice on tryals by juries, for the judge who ſums up the evidence, to cloſe the charge with words to this effect. "If upon the whole matter, you believe "in your conſciences that the priſoner at the bar "committed the fact of which he ſtands in-"dicted, you are to find him guilty: but if "upon the whole matter, you do not believe in "your conſciences that he committed it, you "are to find him not guilty?" Is it not the uſual and conſtant practice, I ſay, to cloſe the charge with words like theſe?

But where is the ſenſe or meaning, I pray ye, of ſuch an admonition, or of words like theſe, if ſtrong circumſtances alone may not, in any caſe, be a ſufficient evidence to authorize the jury to find the priſoner guilty?

If nothing but poſitive, ocular, point blank evidence can be ſufficient for that purpoſe, how trifling and impertinent were it to give ſuch a charge? For

If there be ſuch poſitive and abſolute evidence, what doubt or difficulty can there be in the caſe? or how is it then congruous to ſay, if they believe upon the whole matter, a thing ſo plainly and palpably ſworn, as to leave no room to talk of the whole matter, or hardly of believing at all? And

If there be not ſuch poſitive and abſolute evidence, what reaſon or juſtice is there in the judge's ſaying to them, if upon the whole matter, they believe in their conſciences, what he ſees there is no foundation, and they can have no right, to exerciſe their belief or their conſciences at all about?

In a word, if nothing leſs than ſuch poſitive evidence would avail, how can there ever be any doubt at all? or what occaſion can there be, in any caſe, of having a jury at all? In God's name, what, in that caſe, is, or can a jury be for?

If ſuch poſitive evidence only will ſuffice, 'tis immediately ſeen whether there be ſuch or not: and then the court, without the mediation of a jury, have no more to do than to acquit or condemn at a ſingle word; and the very ſwearing a jury, were a moſt unneceſſary and idle formality.

But to conſider this matter a little further.—— How frequently do tryals of murder in *England*, laſt eight, twelve, ſixteen, hours, or longer? every body knows that ſuch things have frequently happened.

But, I beſeech ye, how could this be, if only ocular, downright poſitive proof could avail to convict a perſon?

Is it not, and muſt it not be ſeen, in one hour of the tryal, whether there be ſuch poſitive and abſolute proof or not?

If there be ſuch poſitive proof, what can there be further to be done? or what occaſion to protract the tryal to any greater length?

If there be not ſuch poſitive proof, why are ſo many fruitleſs hours waſted in giving in evidence, and laying together, circumſtances and preſumptions, which, though ever ſo numerous, or ever

ſo

ſo powerful, could be of no conſequence at all?

What a figure muſt the judges make in ſuffering ſo much time to be miſpent, in hearing, and permitting to be ſolemnly given in evidence, what in itſelf, at this rate, muſt all be ſo utterly inſignificant and beſide the purpoſe?

And yet do they not conſtantly, after trials of ſo great a length, ſolemnly and gravely enumerate all the circumſtances and preſumptions, and then put it to the belief and conſciences of the jury, whether they are from them convinced of the priſoner's guilt? and are not priſoners accordingly conſtantly convicted on them? But

Were it not the moſt crying abuſe in the judges, and the greateſt profanation of juſtice in itſelf, thus gravely to ſet the priſoner's life on ſuch a hazard, if they knew in their conſciences, that there was no evidence given, which ought to affect him?

Ought they not to tell the jury at once, they are to find the priſoner not guilty, without more ado?

Gentlemen of the jury,

Though I hope you need no farther conviction of the falſeneſs of this doctrine, yet it may not be amiſs to tell you what our great oracle of the law, my lord *Coke*, whoſe name you have, I make no doubt, often heard of, defines a tryal to be: "A tryal (ſays he) is to find out, by due "examination, the truth of the point in iſſue."

And is not this, gentlemen, perfectly agreeable to, and a confirmation of, what I have been inſiſting on? That is, that it is to hear, examine and weigh all that is offered on either ſide? Is not this, I ſay, the finding out the truth on due examination?

But, I pray ye, would this be an apt or proper definition, or would this exhibit a juſt or adequate idea, of a tryal, if nothing but point blank proof of the commiſſion of the fact were, or could be, allowed a ſufficient evidence to convict a perſon?

Does it not, on the contrary, ſuppoſe an uncertainty? does it not imply a doubt and difficulty? But

Where can be the doubt and difficulty, if there is ſuch poſitive point blank proof? or what is there to be found out, on due examination, if none elſe be ſufficient?

But, gentlemen, to illuſtrate this matter ſtill farther by the ſame great authority, I beg leave to read you other words of the ſame author, extremely pertinent to this purpoſe; and, gentlemen, they are theſe: "When the tryal is by "verdict of twelve men, there the judgment is "not given upon witneſſes, or other kind of "evidence, but upon the verdict, and upon "ſuch evidence as is given to the jury, they "give their verdict ——And many times juries, "together with other matter, are much induced "by preſumptions, whereof there be three "ſorts, *viz.* violent, probable, and light or "temerary. *Violenta preſumptio* is many times "*plena probatio*; as if one be run through the "body with a ſword in a houſe, whereof he inſtantly dieth, and a man is ſeen to come out "of that houſe with a bloody ſword, and no "other man was at that time in the houſe". Thus you hear, gentlemen, the general doctrine he lays down; and the inſtance he gives by way of illuſtration of it, and which may ſerve the better to make it underſtood.

But, gentlemen, I have another authority in my hand ſtill more explicit of this matter, and which may enable you ſtill the more clearly to judge of it; and that is from a tryal which I had occaſion to mention this morning to another purpoſe; which is of Miſs *Blandy*, who (as I make no doubt you have all heard) was tried at *Oxford* no longer ago than the month of *March* laſt, for the murder of her own father; where the learned judge, in the cloſe of his charge to the jury, has the following words extremely appoſite to the preſent purpoſe: "In the preſent "caſe, which is to be made out by circum-"ſtances, great part of the evidence muſt reſt "upon preſumption, in which the law makes "a diſtinction: a ſlight or probable preſumption only, has little or no weight; but *a vio-*"*lent preſumption* amounts, in law, to full "proof, that is, where circumſtances ſpeak ſo "ſtrongly, that to ſuppoſe the contrary, would "be abſurd."

Thus, gentlemen, it appears in the plaineſt manner from the reaſon of the thing; from conſtant experience; from the words with which the charge of the judge to the jury is always wont to be cloſed; from the, otherwiſe, impropriety of thoſe words of the charge; from the frequent extreme length of tryals of murder in *England*; from the abſolute unneceſſarineſs of ſuch length on any other ſuppoſition; from the definition of a tryal by my lord *Coke*; and laſtly, from the expreſs and plain words of the very charge of which I have juſt now read you a part: from all theſe, I ſay, it is plain and clear, that circumſtantial proof may be, and frequently is, ſufficient in itſelf to convict an offender, and prove the charge againſt him; and that the contrary doctrine is contrary to experience and good ſenſe, and in itſelf falſe and abſurd.

But, may it pleaſe your honours, and you gentlemen of the jury, as abſurd as this doctrine is, the abſurdity of it is not all.——No; there is ſtill ſomething further to be conſidered and guarded againſt; and that is, it's dangerous and deſtructive tendency.

If once it comes to be eſtabliſhed into a rule, that nothing but point blank, poſitive, ocular evidence ſhall ſuffice to convict a man; who can be ſecure of his life or property but for a ſingle day? What a leſſon of encouragement were this to hold out to bloody minded and ill-diſpoſed men! What a ſecurity and indemnity were here promiſed and inſured to them in the commiſſion of their crimes!

Were not this plainly to ſay to them in ſo many expreſs words, "ſee that you commit "your crimes with tolerable ſecrecy and cau-"tion, and you may be aſſured of impunity; "only take care that none be preſent to behold "you execute them; and then, though a thou-"ſand and a thouſand circumſtances ever ſo "loudly proclaim your guilt; though it ſhould "be evinced by ever ſo many and ever ſo glaring "tokens; though every body believes, ſees,

"and

" and aſſuredly knows, that you did, and muſt " have, committed the fact; yet all this is but " circumſtance and preſumption, and by no " means evidence to convict, or at all affect, " you; but, with all the plaineſt and cleareſt " marks of your guilt about you, you may " laugh at your proſecutors, and ſet the whole " world at defiance."

Is not this the plain and palpable language, is it not the neceſſary and inevitable conſequence, of ſuch a doctrine? Is it to be ſuppoſed that ill men can be ſo mighty dull, as not to take ſo very plain a hint? or is it to be imagined they will be checked and reſtrained by juſtice and the laws, when they are taught how they may ſo eaſily, and with uſing ſo little caution, put themſelves out of their reach?

I hope, therefore, we ſhall hear no more of this ſenſeleſs and pernicious doctrine; pretended to be grounded on ſcrupulouſneſs and tenderneſs of conſcience; but the mere effect of falſeneſs of judgment, or perverſeneſs of will. For

What ſort of conſcience muſt that be, which thus combats with itſelf? or by what unaccountable kind of reaſoning muſt it be, that a man perſuades himſelf he is bound in his conſcience to find that to be the caſe, which in his conſcience he believes, and is perfectly aſſured, is not the caſe?

A man that can argue at this rate, let his pretence be what it will, perverſely belies the truth, and equivocates and plays double with God Almighty, and juſtice, and his own conſcience.

But now if it ſhould be aſked, if then any thing leſs than poſitive and abſolute proof of the commiſſion of the fact will avail, and a man may be convicted on circumſtantial evidence only; how ſhall we know what circumſtances are ſufficient to convict an offender? I ſay if this be aſked, I anſwer, in the words which I obſerved to be wont to be uſed in the cloſe of a charge, " when, upon the whole matter, you " believe in your conſciences that the priſoner " committed the fact of which he ſtands in- " dicted;" or, (which is ſtill better) when (as it is ſo happily and ingeniouſly expreſt in the part of the charge I have juſt read to you) I ſay, " when circumſtances ſpeak ſo ſtrongly, " that to believe the contrary, would be ab- " ſurd". For

It is not barely what this or that witneſs, or theſe two or three, or any other preciſe number of, witneſſes ſay, that ſhall acquit or condemn. No; 'tis the joint reſult of the whole evidence taken and conſider'd together; and what, upon examining and weighing that, ſhall appear to you, or (as the well known term is) you ſhall find, to be the truth.

To pretend to lay down any general rule of what is, or is not, ſufficient evidence, were ridiculous and abſurd.

Every fact is to ſtand on it's own circumſtances; and that, and that only, is to be taken to be proved, of which the conſciences and belief of the jury are convinced.

The evidence that does not convince their conſciences and belief, though it conſiſt of a thouſand particulars, is not enough: And

The evidences that does convince their conſciences and belief, is enough, though it conſiſt of ever ſo few.

Gentlemen, you may have obſerved how ſtrenuous both the priſoner and his council were in endeavouring to ward off the force of one piece of evidence which they perceived made ſo powerfully againſt him; and that was that *Coomy*, the deceaſed's negro boy, told *M^c.Kenley*, when he came down to the bay, that it was Mr. *Barbot* who had killed his maſter: this, they ſay, you are to give no heed to; as being what is called hear-ſay evidence only, and no more than what one perſon tells another. But, gentlemen, give me leave to obſerve, there is a diſtinction in this matter; and that this is, in truth, a very ſtrong evidence indeed. That hear-ſay evidence is no evidence at all, I do generally allow; and therefore had *Coomy* the next day, or ſome hours after, told this to *M^c.Kenley*, or any other perſon, it ought to have no weight at all with you; becauſe in that caſe it might not be true; but in the preſent caſe it ought to weigh with you, and powerfully too, becauſe it muſt have been true, as the event and what followed invincibly demonſtrated.

A gentleman is found murdered, and juſt expiring, and a clamour is made, on the ſpot and on the inſtant, that ſuch an one was his murderer; a perſon is ſeen flying from the place where the murder was committed, and the perſon ſo flying is purſued from the place, and found to be the very ſame who was alledged on the ſpot to have been the murderer: I pray ye, does not this prove that the clamour was, and muſt have been, true? and that the perſons who made it ſpoke from abſolute certainty, and were neither deceived themſelves nor deceived others? therefore as hear-ſay is generally no evidence, becauſe it *may be* falſe; ſo that *Coomy* told *M^c.Kenley* is good evidence, becauſe it *muſt* be true. And there is no medium between theſe two things, that either *Coomy* ſaw the priſoner kill his maſter, or he muſt have been inſpired.

The ſame obſervation will hold, with regard to what *Peter* the negro told *Cribbe* in the morning at *Nevis*; *viz.* that he feared Mr. *Barbot* had done miſchief; and againſt which too the ſame objection was ſo ſtrongly preſt, that it was only hear-ſay, and what one perſon told another. But as you heard, gentlemen, this was ſaid by *Peter* before the news otherwiſe came from this iſland to *Nevis* of this unhappy event: and therefore *Peter*, (who, as *Jaſper Thomas* ſwore, was one of the negroes who rowed the canoo which brought the priſoner to *Nevis*) could not then ſpeak what he did, from the information of others, but of his own knowledge only; and as the deceaſed actually was found murdered at that time, either what he ſaid of the priſoner was a neceſſary truth, or he muſt have known that miſchief was done, by inſpiration. And now, gentlemen, as either of theſe two circumſtances ſingly, ſpeaks ſo exceeding ſtrongly, what is not the force of them when put together? 'tis plain there could be no combination or confederacy between theſe two negroes, *Coomy* and *Peter*; and therefore for the former to

ſay,

ſay, on the ſpot, and on the inſtant, of the murder committed, that Mr. *Barbot* had killed his maſter; and the latter ſo ſoon after, at the diſtance of ſeveral leagues, that he feared Mr. *Barbot* had done miſchief, amounts to a demonſtration that both muſt have ſpoke truth: and when to this we join all the intermediate circumſtances, and the tracing the priſoner from place to place, the whole compoſes the fulleſt and moſt invincible proof, without a poſſibility of perjury or miſtake in the matter, that ever was made of any fact whatſoever. And therefore,

It is to little purpoſe that the priſoner has aſked, did no other perſon than himſelf make a will ſuch a day? did no other perſon go in a canoo? was no other perſon out at ſuch an hour of the night? did no other perſon fire at a mark with piſtols? For were theſe queſtions ſingly aſked, there is no doubt but there might be many perſons, of whom each of theſe matters might with truth have been ſeparately affirmed? But alas! that is not the matter! for of what avail were this to the priſoner's defence, unleſs there were other perſons of whom all theſe together might be alſo affirmed? and therefore the only way of aſking theſe queſtions materially to this purpoſe, were in this manner; was there any other perſon who had words of heat with the deceaſed on the ſeventh of *November?* who made ſuch a declaration on the tenth? who was firing at a mark with piſtols on the twelfth? who haſtily made a will at a tavern, and delivered it out of his own cuſtody on the eighteenth? who the ſame night left his bed and houſe at midnight; and the next morning was ſeen flying from the place where the deceaſed was murdered, juſt after he was ſo? And then if there be any one elſe, of whom only half theſe circumſtances can with truth be affirmed, we may ſafely allow all theſe, in the caſe of the priſoner, to go for nothing.

And here, in ſpeaking of flying from the place of the murder committed, I cannot but obſerve how vaſtly ſtronger is the preſumptive proof againſt the priſoner, than that in the caſe put by my lord *Coke*, and which I juſt now read to you: for there was only that ſingle circumſtance; but here is the ſame accompanied with twenty others, which of themſelves had availed to convince any reaſonable perſon's mind, who muſt have committed the murder, even without the ſeeing him fly from the ſpot.

Gentlemen, I ſhall but juſt add; the priſoner cautioned you againſt ſuffering your paſſions to be unduly worked upon by the eloquence of the council, and being miſled by their rhetoric into a belief of his guilt. For my own part, I pretend to no maſtery over the paſſions or other talent of the ſort; and did I even imagine I were poſſeſt of ſuch, ſhould think myſelf not warranted to uſe it on an occaſion like this. The preſent caſe is a caſe of blood, where the ornaments of ſpeech, and the arts of rhetoric, to inflame the paſſions, and blind the reaſon, however juſtifiable they may be in a priſoner on his defence, are certainly not candid or allowable on the part of the proſecution. The ſingle queſtion in the caſe is of meer fact, to wit, whether the priſoner committed the murder; and therefore I have confined myſelf to ſuch reaſonings and arguments only, as I thought conduced to the better finding out the naked truth of that; and can truly ſay, I have urged nothing to your conſciences, which did not ſeem right and juſt to my own. For

I ſhould think the offering to miſlead or abuſe your's, were doing my own the greateſt injury.

You will therefore, gentlemen, conſider the whole together; and if upon the whole you believe in your conſciences, the priſoner did not commit this murder, God Almighty forbid you ſhould condemn him; and if you believe in your conſciences he did commit it, God Almighty forbid you ſhould acquit him.

Mr. Kerr. May it pleaſe your honours,

Mr. Sollicitor, in his reply, has ſo fully anſwered every objection of the priſoner, that it were needleſs to trouble your honours further on this occaſion. I ſhall only beg leave to obſerve one thing which has been omitted by *Mr. Sollicitor*, and that is, that the caſes which have been quoted by the priſoner, I will venture to affirm, are not in any book of authority now extant; ſo that I am really inclined to believe they are caſes of Mr. *Frye*'s own making.

Mr. Preſident. Gentlemen of the jury, this tryal has taken up a great deal of time, and been attended with a variety of circumſtances. I ſhall therefore, as briefly as poſſible, ſum up the evidence, and make ſuch obſervations as occur to me, with as much perſpicuity as I am able.

The firſt witneſs produced by the council for the king, was Mr. *Carew*, who ſays, that at the ſale of the eſtate called *Bridgwater*'s, on the ſeventh of *November* laſt, the priſoner and the deceaſed being preſent, he heard the priſoner ſay to the deceaſed, *that he expected to be treated like a gentleman*, or words to that effect. Theſe words, the witneſs ſays, were ſpoke, he believes, in anſwer to ſomething the deceaſed had ſaid to the priſoner, which the witneſs did not hear.

The next witneſs is Mr. *Thomas Mills*, who was alſo preſent at the ſale of *Bridgwater*'s eſtate. He ſays that the priſoner objected to the conditions of ſale, and that the deceaſed (apprehenſive that he did it with deſign to protract the time till ſun-ſet, after which the eſtate could not be ſold on that day) ſaid to the priſoner, Mr. *Barbot*, the conditions of ſale are very fair, why will you cavil about them? To which the priſoner replied, *I expect to be treated like a gentleman*, or words like theſe; that to this the deceaſed made no other anſwer than *that he ſhould always treat him and all mankind as ſuch.* This witneſs ſays alſo, that the priſoner's whole behaviour appeared to be calculated to delay the ſale. He ſays too, that he verily believes the priſoner and the deceaſed never ſaw each other from the day of the ſale, 'till that of the murder; for that he either ſaw the deceaſed or heard from him every day after the ſale, until he was killed; but he does not know whether they had any other converſation the day of the ſale; for he left them together in the room where the eſtate was ſold. You will obſerve, gentlemen, that the teſtimony of Mr. *Carew* and Mr. *Mills* corroborate each other.

The next witneſs is Mr. *Armour*, who ſays, that between the third and the ſeventh of *November* laſt, he was in company with the priſoner at Mr. *Conſtantine*'s door, and heard him ſay, that Mr. *Mills* had treated him in ſuch a manner as ought never to be forgiven. Mr. *Armour* indeed ſays, that the priſoner did not particularly mention which of the *Mills*'s it was that had treated him thus; but he underſtood that it was the deceaſed he meant. I would make one ſhort remark here. The priſoner himſelf has declared he never had any difference with either Mr. *Thomas Mills*, or Mr. *William Mills*; and as there was no other man of the name of *Mills* in this iſland but the deceaſed; you will judge from the event, who it was the priſoner meant in that converſation with Mr. *Armour*.

The next witneſs that is called on the part of the crown is *Patience Dorſet*; ſhe tells you, that on the king's birth-day ſhe ſaw the priſoner ſtanding under the gallery at *M^r.Cabée's Tavern*, talking to two perſons whom ſhe does not know, and in paſſing by ſhe heard him ſay, *there was a certain gentleman in this iſland that within a fortnight he would either kill or be killed by*. She is very poſitive that it was on the king's birth-day ſhe ſaw the priſoner, and heard him ſay theſe words, from two circumſtances; the firſt, that Mrs. *M^r.Cabée* ſent for her that day to aſſiſt in providing an entertainment for the *lieutenant-general* and his company; and the other, that ſhe heard a great many guns fired. The king's birth-day, you all remember (I ſuppoſe) was celebrated on the tenth of *November*. Now if you will compare what the priſoner ſaid to Mr. *Armour* before the ſeventh, his behaviour to the deceaſed upon the ſeventh, and the declaration he made on the tenth, in the hearing of *Patience Dorſet*; I think there is too much reaſon to imagine it was the deceaſed he meant, when he threw out that menace.

Doctor *James Webbe* is then called. Before this gentleman was examined, I confeſs, I expected he would have fully proved the fact upon the priſoner; for from the cloſe connexion and intimacy between them, I thought it highly probable he might have known ſomething, if not the whole of this matter. And from the character of the *doctor*, his education and rank in life, I took it for granted he would have candidly and ingenuouſly related all that he knew concerning this unhappy affair. But, I own, I was no leſs ſurprized than concerned, to find that every thing which came from him, tending to bring this matter to light, was extorted with ſeeming violence; and that he readily told all that he thought would obſcure and hide the fact. He ſays, that he has known the priſoner between four and five years; that he has frequently employed him as an attorney, and that he lives in great intimacy with him. That he was preſent at the ſale of *Bridgwater*'s eſtate on the ſeventh of *November* laſt, where the deceaſed and the priſoner alſo were; that the eſtate then belonged to himſelf, and was ſold for his debts. He does not know what were the conditions of ſale; but he remembers to have heard the priſoner ſay, we will be bound as far as by law we can be bound. He does not recollect any other words paſſing at the ſale, only hearing the deceaſed ſay to the priſoner, *let us have no ſchool-boy's play*, or ſomething to that effect. He did not hear the priſoner make any anſwer to this; for he was at that time, he ſays, ſo diſtracted and confuſed at having his eſtate ſold, that he gave very little attention to what paſſed. He tells you that the priſoner, at his requeſt, purchaſed the eſtate for him. This really ſeems ſtrange and unaccountable, that a man whoſe eſtate was then ſelling, and who had procured a friend to purchaſe it for him, ſhould be ſo inattentive, as not to recollect what the conditions of ſale were: and it is as extraordinary that a man ſhould buy an eſtate without knowing on what conditions. He ſays he does not know how long the deceaſed ſtayed at *Nevis* after the ſale, or whether the priſoner ever ſaw him after. That the day after the ſale he ſaw the priſoner, but does not recollect that any converſation paſt between them on the buſineſs of the preceding day, or that the name of the deceaſed was mentioned by the priſoner. This is very amazing; that a man in an affair ſo near his heart, and which had thrown him into ſuch confuſion and diſtraction of mind, ſhould not the next day, on ſeeing his friend who purchaſed his eſtate for him, make ſome enquiry about the event of the preceding day. But this gentleman's memory is fatally treacherous to him; for he, in almoſt the ſame breath, ſays, he thought the terms of ſale hard *too*, and adviſed the priſoner not to ſign them. From hence it plainly appears that doctor *Webbe* was well acquainted with the conditions of ſale, and muſt have had ſome converſation with the priſoner about them, or he could not have thought them hard, nor have adviſed the priſoner not to ſign them. He tells you, that the priſoner came to his houſe on the ſixteenth of *November*, and ſtaid there 'till the eighteenth, on which day they dined together at *Jacob Saunders*'s, and executed a bond of indemnity to *Saunders*, for having indorſed the priſoner's bills for the depoſite of the purchaſe-money of the eſtate; that from thence in the evening he went with the priſoner to *O Donnell*'s tavern, where the priſoner ſat down to write; that the priſoner deſired him to get three witneſſes to atteſt the paper he was writing, and that he did procure three witneſſes which were *Potts*, *O Donnell*, and *Springett*, in whoſe preſence the priſoner executed the paper he was writing; and immediately after delivered it to him (*Webbe*.) He tells you that he neither read the paper while the priſoner was writing it, nor ſince it has been in his own cuſtody; and that he is quite ignorant of the contents of it. In this he is manifeſtly contradicted by his own depoſition which you have heard read, and which, as has been proved to you, was taken before judge *Herbert* at *Nevis*. In that depoſition he ſwears that the priſoner made his will at *O Donnell*'s on the eighteenth of *November* in the evening, and delivered it to him (*Webbe*) informing him at the ſame time that he had made him a legatee in it. He tells you that after this paper (for he will not now call it a will, though it has been fully proved he knows it to be ſo) was executed and delivered to him by the priſoner, they both went home together to this witneſs's houſe; that the priſoner

priſoner at about nine o'clock went to bed; that having occaſion to get up at about one o'clock, as he was paſſing through the hall, the priſoner called to him, and asked him what o'clock it was; but that he did not ſee the priſoner from the time he went to bed, till the next morning, at about nine o'clock, he ſaw him riding up to the houſe on one of his (*Webbe*'s) horſes, attended alſo by his negro boy *Pope*; that he had on a white coat, a dark coloured waiſtcoat, and a ſilver laced hat; that he did not ask the priſoner, nor does he know where he had been; but thinks there was time enough, from the hour he ſpoke to him the night before, 'till the next morning that he ſaw him riding up, to have been at *Saint Chriſtopher*'s and back again; that he knew nothing of the priſoner's taking his horſe and boy, but that it was very cuſtomary for him to take them whenever he wanted them, without asking his leave. He remembers the priſoner having a red trunk which he brought from Mrs. *Daſent*'s on the ſixteenth of *November*; that he did ſee the priſoner's boy *Nero* bring a red trunk to his houſe the morning of the nineteenth, at the ſame time that the priſoner was riding up to his houſe; but he does not know whether that trunk was the ſame the priſoner brought from Mrs. *Daſent*'s on the ſixteenth, or whether the trunk now produced to him is the ſame. He tells you, that on the *Sunday* before the murder, the priſoner and he were firing at a mark with a pair of piſtols that belonged to Mrs. *Daſent*; that Mrs. *Daſent*, on miſſing a pair of her piſtols, ſent to him, to deſire he would come to her houſe; that he did go and aſſiſt her in ſearching for the piſtols; that he found them under the bed in a pair of holſter caps; but he knew not of their being in that place, nor who put them there: that at the time he was ſearching for the piſtols in the chamber, he obſerved a red trunk which he believes belonged to the priſoner, and which he ſaw opened afterwards by judge *Herbert*; in which were found, he ſays, a coat, waiſtcoat, and ſome linnen, which were moiſt; that he cannot tell whether the cloaths found in the trunk were the ſame the priſoner had on the nineteenth in the morning, when he rode up to his houſe; that he believes the trunk and cloaths now produced to him, are the ſame which he ſaw at Mrs. *Daſent*'s the morning after the murder. He tells you, that on the nineteenth the priſoner dined at Mr. *George Webbe*'s ſenior, and he himſelf dined at Mr. *Maynard*'s; that in the afternoon, while he was at Mr. *Maynard*'s, a negro came to him, and told him the priſoner had killed the deceaſed; that he went ſoon after to Mr. *Symmonds*'s; that he did not mention there what the negro had told him, though he had a very good opportunity to do it; for while he was there, he ſays, Mr. *Symmonds* received a letter, giving an account of the priſoner's having killed the deceaſed; that he himſelf alſo received a note from the priſoner, preſſing him to come immediately to him at *John Herbert*'s; that he did not mention at Mr. *Symmonds*'s, having received ſuch a note from the priſoner, though he heard Mr. *Symmonds* ſay, he would go and aſſiſt the *poſſe* in purſuit of him; that he went immediately after to *John Herbert*'s, where he found the priſoner drinking tea; that the priſoner immediately took him out into the neceſſary houſe, and asked him if he had heard the report of his having killed Mr. *Mills*; that he anſwered, yes; that the priſoner replied, he ſhould not fly for it, for he knew nothing of it. He tells you, that this was all the converſation that paſſed between them at that time; that while they were in the neceſſary houſe, the officers of juſtice apprehended the priſoner; that the priſoner took him aſide in Mr. *Herbert*'s hall, after he was apprehended, and deſired him to get ten piſtoles from his uncle *Webbe* for him; that he ſaw the priſoner while he was in jail at *Nevis*; that all the converſation he had with him there was, deſiring him to make over *Bridgwater*'s eſtate to him. He tells you, that he never knew that the priſoner had any reſentment againſt the deceaſed; that he knew nothing of his boy *Pope*'s having been at *Bridgwater*'s eſtate the night before the murder; that he did not ſend *Pope* out any where that night, and did not know that he was gone out; that he himſelf was not ſent for by any of his patients that night; and that it was ſo boiſterous a night, as he ſhould not have gone out in for pleaſure.

Upon the whole of doctor *Webbe*'s evidence, his inclination to ſerve the priſoner very plainly appears; but from his want of candour and ingenuity, from the many prevarications he has been guilty of, and the manifeſt contradiction between his depoſition at *Nevis*, and his examination on the tryal; his evidence, inſtead of anſwering the intention of his giving it, ſerves rather to fix a ſtrong ſuſpicion of guilt on the priſoner.

Mr. *O Donnell*, who was the next witneſs, ſays, that the priſoner and doctor *Webbe* came to his houſe between ſeven and eight o'clock in the evening on the eighteenth of *November*; that the priſoner called for pen, ink, and paper, and ſat down to write; that while he was writing, he called doctor *Webbe* to him ſeveral times, and they ſpoke together in a low voice; that doctor *Webbe* looked over the priſoner frequently while he was writing; that as ſoon as the priſoner had finiſhed what he was writing, he went with doctor *Webbe* into an inner room; that after ſome little time doctor *Webbe* returned, and deſired him, with *Potts* and *Springett*, to go in and witneſs a paper; that the priſoner did execute a paper in the preſence of *Potts*, *Springett*, and this witneſs; that he knows not what the paper was, but believes it was a will, becauſe there were three witneſſes to it; that the priſoner, after he had ſigned the paper, put his thumb on the ſeal, and pronounced ſome words, but ſo inarticulately, that he could not diſtinguiſh what he ſaid; that the priſoner covered with his hand the place where the atteſtation is uſually written, ſo that he could not ſee it. He tells you, that as ſoon as the priſoner had executed this paper, he delivered it to doctor *Webbe*.

Charles Potts is then called. He ſays, that on the eighteenth of *November* laſt, being at *O Donnell*'s in the evening, ſomebody called to him, and told him he was wanted in the inner room; that he went in, and the priſoner deſired him to witneſs an inſtrument of writing; that he, together

ther with *O Donnell* and *Springett*, did witneſs a paper, to which he ſaw the priſoner ſign his name; that the priſoner put his thumb on the ſeal, and took it off again, but does not recollect that he heard him ſay any thing; that he took the inſtrument of writing to be ſome deed to ſecure *Jacob Saunders*, becauſe he met the priſoner and doctor *Webbe* coming from *Saunders*'s that day. I cannot help obſerving, that this is a very weak reaſon for ſuppoſing it to be a deed to ſecure *Saunders*; for had it been really ſo, there could be no neceſſity for keeping it ſuch a profound ſecret; and, in the next place, it is very natural to ſuppoſe, they would have executed any deed of that kind at *Saunders*'s houſe, when they executed the bond of indemnity to him. He tells you, that he never knew that the priſoner had any reſentment againſt the deceaſed, but that, on the contrary, he has heard him often expreſs great regard for him.

The next witneſs that is called is *Thomas Hobſon*. He tells you, that on *Saturday* night, the night before he heard the deceaſed was murdered, doctor *Webbe*'s boy *Pope* came with a horſe of his maſter's at midnight, to the houſe where he (*Hobſon*) lives, on *Bridgwater*'s eſtate, and ſaid he had been round the iſland looking for his maſter; that *Pope* and the horſe were both wet; that *Pope* put the horſe in the ſtable, and ſtaid there all night. He tells you, that about eight o'clock the next morning (which was the day on which he heard of the murder) he ſaw a little man coming up to the houſe in a white coat, and ſilver laced hat; that as ſoon as he came up to the ſteps, he called for *Pope*, and ordered him to ſaddle the horſe; that he asked *Pope* which road he ſhould take; that *Pope* ſhewed him the ſhorteſt way to Mr. *Pinney*'s where doctor *Webbe* lives; and that he got on horſeback, and rode away: he believes he came from the bay; and that his ſhoes were wet. He tells you, that the the priſoner at the bar is the very man who came to his houſe on the nineteenth in the morning, and whoſe dreſs and perſon, with the other circumſtances, he has deſcribed to you.

Sarah Hobſon, the ſiſter of *Thomas Hobſon*, is called next; but as her evidence agrees in every particular with that of her brother, I think it is needleſs to repeat it to you.

The next witneſs on the part of the crown is *John M'.Kenley*. He tells you, that between four and five o'clock in the morning on the nineteenth of *November*, as he was lying on his bed, *Coomy*, a negro belonging to the deceaſed, ruſhed into his chamber, and, in great fright, told him, that his maſter was fighting at *Frigate-Bay*, with a gentleman from *Nevis*; that he immediately got up, and ran down to the *Bay*, where *Coomy*, being on horſeback, had got before him; that he found *Coomy* ſupporting the deceaſed; that he went up to him, and took hold of his hand, and ſpoke to him; that he made him no anſwer, nor had no pulſe; that he found then he was dead, though ſtill warm, and was but juſt expired. He tells you, that on enquiring of *Coomy* who it was that had killed his maſter, *Coomy* told him it was the priſoner, and that he was juſt gone off in a canoo; that he immediately ran down to the ſea-ſide, and ſaw a canoo, with four oars and a paddle, making very faſt from the ſhore, and ſomebody in white ſitting in the ſtern of it, but he could not diſtinguiſh whether it was a white perſon or a negro; that the deceaſed had on his great coat and gloves; that his piſtols were in the holſters on his horſe; and his ſword in the ſcabbard, wrapped in the belt, at ſome diſtance from him.

The next witneſs is *William Johnſon*. He tells you, that at about ſix o'clock in the morning, on the nineteenth of *November* laſt, as he was coming down from the *Salt-ponds*, he ſaw the priſoner in a canoo, with four oars and a ſail, between forty and fifty yards diſtant from him; that the canoo ſeemed coming from *Frigate-Bay*, and was rowing towards *Nevis*; that the priſoner had on a white coat, a ſilver laced hat, and a dark coloured waiſtcoat; that he knows the priſoner very well; that he could ſee all the way between the place where he met the priſoner, and *Nevis*; and that no other canoo was in the channel, but that in which the priſoner was. The priſoner and his council have attempted to diſcredit the teſtimony of *Johnſon*, by ſaying he was publickly whipt for petty larceny at *Montſerrat*; and that he could not poſitively ſwear before the coroner's inqueſt, that it was the priſoner he ſaw in the canoo. But they ſhould, to have effected their purpoſe, have produced the record of *Johnſon*'s conviction, without which, a bare aſſertion of his guilt ought to have no weight with you. With regard to his refuſing to ſwear poſitively to the priſoner before the coroner's inqueſt, I think he ſwore as every cautious man ought to do, that he verily believed it was the priſoner he ſaw in the canoo; but after he had, for his better recollection, ſeen him in jail, he was certain, and has now, as you have heard, poſitively ſworn it was the priſoner he ſaw in the canoo. And beſides, Mr. *Wilſon*'s evidence does entirely acquit *Johnſon* of any ill deſign againſt the priſoner, and does certainly ſtrengthen his evidence; for Mr. *Wilſon* ſwears, that *Johnſon* brought him a letter from *Montſerrat*, the morning the deceaſed was murdered; that having heard the report of the murder, he told *Johnſon*, that the deceaſed was killed by the priſoner, at which *Johnſon* expreſſed a good deal of ſurprize, and ſaid, that he had met him that morning in a canoo going to *Nevis*. From this circumſtance, I think, *Johnſon*'s evidence ought to receive its full credit.

Jaſper Thomas and his ſon *John Thomas* are next called. They both agree in their evidence, and tell you, that between ſix and ſeven o'clock in the morning, on the nineteenth of *November* laſt, they ſaw a canoo belonging to *John Cribbe*, land under the manchioneal trees, juſt under *Lowland Church*, at *Nevis*; that as ſoon as the canoo ſtruck the ſhore, the priſoner jumped out of it; that a little yellow negro boy jumped out at the ſame time, with a ſmall red trunk on his head, and went towards the town; that *Hulburd*'s *Peter*, and *Deverade*'s *Joe*, were in the canoo; that the priſoner had on a whitiſh coat, and a ſilver laced hat; that they ſaw the canoo above fifteen hundred yards before ſhe came to land; that ſhe was under ſail, and did not ſtrike ſail 'till ſhe landed; and that ſhe ſeemed coming from the *Salt-ponds*.

William

William White is then called. He tells you, that on the nineteenth of *November* in the morning, as he was at work at Mr. *Woodley*'s eſtate, he ſaw a little man in a brown coat, and a laced hat, which he knew to be the priſoner, walking up the road that leads to *Bridgwater*'s eſtate; that he believes he came from the bay; that he knows the priſoner very well, and is certain he is the perſon he ſaw.

The next witneſs is Mr. *Bridgwater*, who tells you, that between nine and ten o'clock in the morning, on the nineteenth of *November*, he ſaw the priſoner on a ſorrel horſe belonging to doctor *Webbe*, going the neareſt way to doctor *Webbe*'s houſe; that on that ſame day in the afternoon he went to Mr. *Symmonds*'s; that while he was there, doctor *Webbe* came in; that preſently after, Mr. *Symmonds* received a letter, giving him an account of the priſoner's having killed the deceaſed; that as ſoon as Mr. *Symmonds* mentioned it, doctor *Webbe* changed countenance, and ſaid that the priſoner had lain at his houſe the night before; that Mr. *Symonds* asked doctor *Webbe* if he had ſeen the priſoner that morning; that doctor *Webbe* ſaid he had not ſeen him ſince the night before; at which this witneſs expreſſed a good deal of ſurprize, and ſaid he had ſeen the priſoner that morning riding towards his (*Webbe*'s) houſe, on one of his horſes; that to this *Webbe* made no anſwer, but, in about five minutes, went away, and ſaid he was going up towards the mountain.

John Cribbe is then called, who tells you, that on the *Friday* before the deceaſed was killed, the priſoner hired his canoo to carry ſome letters to *Saint Kitts*; that ſhe returned the next day in the afternoon, and the negroes that belonged to her, took her (as he thought) to go a fiſhing; that he did not ſee them again 'till about eight o'clock the next morning, which was the day he heard the deceaſed was killed; that he went to *Peter*, one of the negroes belonging to the canoo, and asked him "*what luck?*" (ſuppoſing he had been fiſhing;) that *Peter* anſwered him, "*poor luck*," and ſeemed very melancholy and thoughtful; that upon enquiring the reaſon of it, *Peter* told him he had been to *Saint Kitts* with Mr. *Barbot*, who, he was afraid, had done a great deal of miſchief, for he believed he had killed Mr. *Mills*. He tells you, it was about ten o'clock in the morning when he had this converſation with *Peter*; that at that time he had not heard, either by common report, or otherwiſe than from *Peter*, of the death of the deceaſed; and indeed from the evidence of *Quin* which immediately follows, he could not have heard it from common report; for *Quin* tells you, he was the firſt that carried the news to *Nevis*, and that he did not arrive there 'till eleven o'clock. This makes it highly probable, that what *Peter* ſaid was too true.

Mrs. *Daſent* is then called. She tells you, that on the nineteenth of *November* laſt, hearing that the magazine was broken, and of the murder of the deceaſed, ſhe ordered all the arms in her houſe to be ſearched for; that miſſing a pair of piſtols, ſhe ſent to doctor *Webbe*, who came to her, and after ſearching a good while, at laſt found the piſtols under the bed; that the priſoner's trunk was in the room where the piſtols were found, but ſhe new not of it's being there, 'till that day, nor how it came there; that ſhe ſaw the trunk opened, in which were found a brown waiſtcoat and a pair of black breeches, which ſhe believes belonged to the priſoner; that ſhe believes the trunk and cloaths now produced to her, are the ſame ſhe ſaw opened at her houſe by Judge *Herbert*.

Judge *Herbert*, who is the next witneſs, tells you, that the day after the murder he went to Mrs. *Daſent*'s, where he ſaw the piſtols with the trunk and cloaths which have been produced to him; that the cloaths were wet, and he believes with ſalt water; for on touching the waiſtcoat with his tongue, he found it ſalt. He alſo tells you, that being at Mr. *Colboun*'s, where the body of the deceaſed was brought on the day of the murder, he ſearched the pockets of the deceaſed, and found in his breeches pockets three bullets.

Mr. *Pringle* and Mr. *Baker* are then called, who tell you, that being at Mr. *Colboun*'s on the day the deceaſed was killed, they examined his piſtols, which they know to be the ſame that are now produced; that they could not, upon the moſt careful examination of them, perceive the leaſt ſtain of powder on either of them, except about a grain or two, which they ſuppoſed to have been bruiſed by the hammer; that they are convinced neither of the piſtols had been lately diſcharged, for Mr. *Baker* having put his finger into the barrel, there came off on it, a ruſty dirt, which he tells you would not have been there, if the piſtols had been lately fired out of. They alſo tell you, that upon examining the cloaths of the deceaſed, they found on the right flap of his coat, and the inſide of his great coat, on the right ſide, a ſtain of dry powder.

The council for the crown, to corroborate and ſupport the evidence of *Patience Dorſet*, have produced *Martha Scoaper*, *Mary Sutton*, and *Mary Cockade*, with whom they conclude their evidence. The two laſt ſwear poſitively that the priſoner was on this iſland on the king's birth-day, and are ſo very circumſtantial in their evidence, that I think they cannot be miſtaken. For *Sutton* has very particularly deſcribed his dreſs to you, and *Cockade* has alſo ſworn to ſome particular words ſhe heard him ſay in *M'Cabé*'s *tavern* on the king's birth-day. The evidence of *Scoaper* is not ſo poſitive as that of the other two, but it ſerves to ſtrengthen and give weight to what they have ſworn.

The priſoner in his defence poſitively denies his having had any reſentment againſt the deceaſed, ſays it was very eaſy for him to have made his eſcape, if he had been guilty of the crime laid to his charge, and that it was natural to ſuppoſe he would have done ſo; that the firing the piſtols the *Sunday* before the murder, was merely accidental, and to amuſe himſelf; that he was not on this iſland on the tenth of *November*. He then calls his witneſſes, the firſt of which is Mrs. *Lowman*. She is poſitive that the priſoner was at her father's on the tenth of *November*; that in the morning of that day he went with *Daniel* to Mr. *Ottley*'s, and returned and dined at her father's; that on that ſame day ſhe herſelf dined at her brothers *George Webbe*'s, in company with Mr. *William Herbert*. In the

firſt of theſe circumſtances ſhe is contradicted by the evidence of Mrs. *Ottley* and Miſs *Anne Herbert*, who tell you, that it was on the ninth of *November* the priſoner and *Daniel* came to Mrs. *Ottley*'s; in the other ſhe is alſo contradicted by Mr. *William Herbert*, who tells you, that it was on the ninth of *November* he dined at young *George Webbe*'s, in company with Mrs. *Lowman*, and on the tenth he dined at Mr. *Coles*'s; ſo that Mrs. *Lowman* muſt be miſtaken in the day. Mr. *Joſiah Webbe*, the brother of Mrs. *Lowman*, is next called. He cannot ſwear poſitively; but he believes the priſoner was at his father's on the tenth of *November*.

John Cornelius is the next witneſs. He is poſitive that the priſoner was at old Mr. *Webbe*'s on the tenth of *November*; but the contrary has been proved by ſo many witneſſes on the part of the crown, ſupported with ſuch ſtrong circumſtances, that *Cornelius* muſt certainly be miſtaken in the day.

Mr. *Julius* was alſo called upon by the priſoner to prove that *Johnſon*, one of the witneſſes againſt him, could not ſwear poſitively to him before the coroner's inqueſt; but the obſervations I have already made on that part of *Johnſon*'s evidence, will be ſufficient, without repeating to you that I think *Johnſon*'s evidence a good one, and ought to have its proper weight with you.

Theſe are the witneſſes produced by the priſoner, that ſeem to be any ways material in his favour; he has, indeed, called many others to prove his being at *Nevis* on the *tenth of November*, but they have all failed in this circumſtance, which would have been of great conſequence to him, if he could have eſtabliſhed it; as it would have effectually invalidated the evidence of *Patience Dorſet*, and the reſt, who ſwore to his being in this iſland on that day.

I have, as well as I have been able, gentlemen, given you the ſubſtance of the evidence on both ſides, in which I hope I have omittted nothing material.

I muſt obſerve to you, that in caſes of murder, and the like atrocious crimes, the law has relaxed much of its ſeverity and ſcrupulouſneſs in the proofs, and does not ſo abſolutely require ſuch poſitive proof, as in matters of *meum* and *tuum*, where they may be had, but in theſe cannot: for no man who knows, or even imagines, that his life muſt anſwer for the perpetration of a deed, will call eye-witneſſes to it; but will, with as much ſecrecy as his invention can ſupply, execute his intention; and to admit none but poſitive occular proof, would be rejecting all, and proclaiming impunity.

It has been juſtly obſerved to you by the council for the crown, that the law where the circumſtances are ſo cloſely connected and linked together, as in this caſe, and amount ſo fully to what is called a *violenta preſumptio*, admits this as full proof, and, in my opinion, more ſo than any one poſitive evidence, whoſe memory may be deceitful, or who may poſſibly be ſuborn'd; but in facts made appear from circumſtances which are dumb, we cannot be deceived; nor they falſly charge or partially excuſe.

The circumſtances of this unfortunate affair hang ſo cloſely together, that they carry too glaring a proof to admit of much doubt, by whoſe hand Mr, *Mills* fell.

Mr. *Armour* declares, that he heard the priſoner ſay, between the *third* and *ſeventh* of *November*, that *Mr.* Mills *had treated him cruelly, and in ſuch a manner as ought never to be forgiven*; the priſoner has acknowledged, he had never any difference with Meſſieurs *Thomas* and *William Mills*, it then could have been none but the deceaſed he meant: though this the priſoner denies, and ſays, Mr. *Armour* muſt have miſunderſtood him.

Patience Dorſet ſwears, that ſhe heard the priſoner declare, on the *tenth* of *November*, that *he would either kill or be killed by a perſon of diſtinction in this iſland, in the courſe of ten days.* Mr. *Mills* is found dead in a remote part of the iſland on the nineteenth, within the time limitted; and by the evidence now given in court, by the gentlemen who opened the body before the coroner's inqueſt, it appears, that he had been killed by a bullet, or ſome other ſubſtance diſcharged from a fire-arm. From the evidence of *Armour* and *Dorſet*, a propenſe malice appears, and a life taken away through ſuch malice propenſe in the eye of the law and man, is deemed murder in the higheſt degree.

The priſoner too, in a precipitate manner, and in a tavern, the night before Mr. *Mills* was found dead, executed his will; in his defence he acknowledges the deed executed at *O Donnell*'s to have been ſuch: had he not been conſcious that he might have ran ſome riſque of looſing his life the next morning, why in ſuch a place, and in ſuch a manner, draw and execute a deed of ſo nice a nature, and of ſuch conſequence as his will? But the time, by Mrs. *Dorſet*'s evidence, which appears he had limitted to his own life, or a perſon's of diſtinction in this iſland, was near expired, therefore neceſſary ſuch a deed ſhould be executed.

The next morning Mr. *Mills* is found dead. The priſoner is declared by *Coomy* to be the perſon by whoſe hand his maſter fell; and tho' by law this is not evidence, yet by Mr. *M'.Kenley*'s evidence, who declares he ſaw a perſon rowing in a *canoo*, from the place from whence *Coomy* had told him the priſoner embarked, deſcribing his dreſs; which perſon is immediately after met by *Johnſon*, who perſonally knows him, deſcribes him to be dreſs'd in the ſame manner, and declares that no *canoo* was then at ſea, but the one in which was the priſoner; that he could diſtinctly ſee the whole paſſage from *Frigate-Bay*, the place where Mr. *Mills* then lay dead, to *Nevis*, where the priſoner was ſeen to land by *Jaſper Thomas* and his ſon, who declare that they ſaw the *canoo* coming from *Saint Chriſtopher*'s, deſcribe his dreſs to be the ſame as *M'.Kenley* and *Johnſon*: *Jaſper* is ſo particular, as to name two of the negroes who rowed the *canoo*, one of which (*Peter*) as appears from *Crib*'s evidence, and which ſtrengthens and is ſtrengthened by *Coomy*'s declaration, ſays, that he had been that morning to *Saint Kitt*'s with *Mr.* Barbot, *who he feared had done a great deal of miſchief, for he believed he had killed Mr.* Mills. And as this declaration of *Peter*'s was made to *Crib*, before the account of Mr. *Mills*'s death

death had reached *Nevis*, as appears from *Quin*'s evidence, who was the expreſs ſent up in ſearch of the priſoner, and the two ſlaves were four or five leagues aſunder, and could not have ſeen each other from the time of the commiſſion of the fact, to this declaration of *Peters*; this could not have been by them concerted, and of itſelf carries ſo much weight, as to merit ſome attention. Again, *Thomas Hobſon* and ſiſter declare, that in the morning of the day on which they heard the account of Mr. *Mills*'s death, they ſaw a little man, whom they know to be the priſoner coming up from the bay; that he came to their houſe, and aſked for doctor *Webbe*'s boy *Pope:* when the boy appeared, he did not aſk if he had got *a horſe*, but ordered him to ſaddle *the horſe*; from this then it is evident, that he knew the horſe and boy were there, or he would not have called ſo immediately for *Pope*, and ordered ſaddling *the horſe*. Doctor *Webbe* too proves, that the horſe and boy muſt have been taken out of his ſtable by the priſoner; for he declares, that he himſelf had not that night been called out by any patient, nor had he ſent that boy on any meſſage. Theſe evidences deſcribe the ſame dreſs as the preceding ones. Other evidences have been produced by the king's council, who deſcribed the ſame dreſs, and traced the priſoner to doctor *Webbe*'s, where the *doctor* acknowledges his arrival, dreſſed alſo in the ſame manner, as every other evidence had.

From ſuch a chain of evidences, who were ſeparated from each other in different iſlands, perſons no ways connected, and ſo exactly tallying with each other, little room, as I ſaid before, can be left to doubt.

It was eſſentially incumbent on the priſoner, for his own ſake, to prove where he was, from the time he went to bed at doctor *Webbe*'s, on the eighteenth of *November* at night, to the time he was ſeen to land at *Nevis* on the nineteenth in the morning, but this he has not attempted to do.

Leaſt you ſhould have entertained a notion, that the killing a perſon in a duel is not murder in the eye of the law, as the life of each in ſuch an encounter runs an equal riſque; I aſſure you, gentlemen, the law makes no ſuch diſtinction, even in caſes of fair duels. If from the evidences you are ſatisfied, that Mr. *Mills* fell by the hands of the priſoner, and that he had a malicious intent, the law makes it murder as much in this caſe as any other. The priſoner, in his defence to clear himſelf, ſays, from his known and paſt conduct in life, there is no reaſon why he ſhould be even ſuſpected of engaging in a duel; but from the Evidences of Meſſieurs *Pringle* and *Baker*, that the piſtols of the deceaſed had never been diſcharged, or even were they loaded; and from his ſword's belt being buckled round the hilt, and at a diſtance from him, as appears from *M*^r^. *Kenley*'s evidence, and from the direction of the ball or ſubſtance which pierced the body of the deceaſed, which entered ſo far backwards, and ſtruck on the oppoſite ſide ſo far forwards; and of which Meſſieurs *Hamilton* and *Edwards* declare, to the beſt of their knowledge and belief, Mr. *Mills* died, and that he could not have received the wound in a poſture of defence: from theſe circumſtances it muſt be left to you, upon the evidences, to conſider whether this was even a fair duel.

I ſhall detain you, gentlemen, with but one more obſervation, which is, that no perſon but the priſoner has been proved or known to have declared a reſentment to Mr. *Mills* the deceaſed; no perſon but the priſoner was ſeen going from the place where Mr. *Mills* was found but juſt expired; and no perſon of diſtinction in this iſland killed but Mr. *Mills*.

All circumſtances of perſons, time, and place, muſt be well conſidered. It is alſo your duty to weigh the evidences that have been offered to you, and to judge from thence, whether the priſoner is guilty of the murder wherewith he ſtands charged, or not guilty; and in conſidering this matter, let me recommend to you, that you deveſt yourſelves of any impreſſions that may have been made on you from the relation of this fact out of doors, and that you conſider merely the evidence given you here on the tryal.

If, upon the whole, you believe in your conſciences, that the priſoner committed the fact of which he ſtands indicted, you will find him guilty: but if, upon the whole, you do not believe in your conſciences that he committed it, you are to find him not guilty.

Then the jury withdrew, and in about half an hour returned.

Cl. of Arr. Gentlemen, are you all agreed on your verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our foreman.

Cl. of Arr. John Barbot, hold up thy hand. *(which he did.)* Gentlemen of the jury, look upon the priſoner: how ſay you, is *John Barbot* guilty of the felony and murder whereof he ſtands indicted, or not guilty?

Jury. Guilty.

Cl. of Arr. What goods or chattles, lands or tenements, had he at the time of the ſame felony and murder committed, or at any time ſince, to your knowledge?

Jury. None.

Cl. of Arr. Hearken to your verdict as the court hath recorded it. You ſay that *John Barbot* is guilty of the felony and murder whereof he ſtands indicted; and that he had not any goods or chattles, lands or tenements, at the time of the ſaid felony and murder committed, or at any time ſince, to your knowledge; and ſo you ſay all.

Cl. of Arr. John Barbot, hold up thy hand. You have been indicted of felony and murder. You have been thereupon arrained, and pleaded thereto not guilty, and for your tryal you have put yourſelf upon God and your country, which country have found you guilty. What have you now to ſay for yourſelf, why the court ſhould not proceed to give judgment of death upon you according to law?

Priſ. May it pleaſe your honours there is a fault in the indictment. The fact is laid to have been committed at *Frigate-Bay*, in the pariſh of *Saint George Baſſeterre*, and *Frigate-Bay* is in the pariſh of *Saint Peter*.

Mr. Sol. Gen. May it pleaſe your honours, the priſoner, admitting it were as he ſays, is too late in his exception. That is a matter of fact,

and,

and, if it had been material, (which it was not) ought to have been ſhewed on evidence; but cannot be made uſe of in arreſt of judgment. However, the truth is, there is no ſuch miſtake as he mentions in the indictment; for *Frigate-Bay* is actually in the pariſh of *Saint George*, and if it were neceſſary we could prove it.

Priſ. May it pleaſe your honours, I have nothing more to ſay.

Mr. Preſident. *John Barbot*, you have been indicted for the murder of *Mathew Mills*, eſquire, and for your tryal have put yourſelf upon God and your country: that country has found you guilty.

You have had a long and a fair tryal. You have challenged many who were called up as jurors, though not the whole number you were intitled to by law; ſo that I may with juſtice ſay, you have been tried by a jury, to which you yourſelf had no exception.

I am ſorry it falls to my lot to acquaint you, that I am no longer at liberty to ſuppoſe you innocent.

You are convicted of a crime the moſt horrid and dreadful in itſelf. A crime attended with the moſt aggravating circumſtances. You have deprived the world of one of its moſt worthy and uſeful members; and render'd unhappy, numbers of perſons, who drew the means of ſubſiſtance immediately from the bounty and benevolence of the unfortunate gentleman deceaſed.

It is hard to conceive what provocation you could have received from a gentleman of ſo mild and gentle a diſpoſition as the deceaſed was, to induce you to perpetrate an act ſo ſhocking. But I would adviſe you, as ſome kind of atonement for the crime you have been guilty of, to make a full confeſſion of the whole matter. Let me recommend to you alſo, to employ the little time you are likely to continue in this world, in endeavouring to make your peace with that great God, whoſe mercy is equal to his juſtice.

Nothing now remains, but to pronounce the ſentence of the law upon you, which is,

That you are to be carried to the place from whence you came, and from thence to the place of execution, where you are to be hanged by the neck until you are dead: And may God of his infinite mercy receive your ſoul.

The priſoner then addreſſed himſelf to the court in this manner:

May it pleaſe your honours,

Since it can no longer avail me to conceal the fact, I will make a frank confeſſion of the whole.

That I did kill Mr. *Mills*, is moſt true.—— That I killed him fairly, is equally true——fairly according to the notions of honour prevailing among men. From theſe falſe principles of honour I was induced to engage in the unhappy duel, which in it's conſequences deprived the world of ſo worthy a gentleman, and has involved me in theſe unhappy circumſtances. Falſe I am convinced they are, notwithſtanding the countenance they receive from the daily practice of the world.

I make no doubt but that the words which Mr. *Carew* and Mr. *Mills* have ſworn, did paſs between the deceaſed and myſelf at the ſale of *Bridgwater*'s eſtate, though I cannot now recollect that they did. But this was not the cauſe of the duel.

The provocation I received from Mr. *Mills* was this:

After I was declared the purchaſer of the eſtate, I ſat down to draw the bills of exchange for the depoſit. While I was about them Mr. *Mills* came and looked over me, and obſerving that I had made them payable at ninety days ſight; he objected to them, and asked me if I knew what I was about, and inſiſted on having the bills drawn at a ſhorter ſight? To which I anſwered, that I was ſure he muſt know it was uſual for bills of ſo large a ſize to be drawn at a long ſight. I told him further, that I apprehended he had no right to object to the bills at all, if the marſhal agreed to accept them as they were drawn. To this Mr. *Mills* replied, "*Sir, you "are an impertinent puppy.*" I took no notice of this 'till after I had finiſhed the bills, and then I took him aſide, and ſpoke to him to this effect: That I little expected to receive ſuch treatment from a gentleman of his known politeneſs and good breeding; that as I was not conſcious of having deſerved it, I deſired he would make me ſome apology for it. He replied, that he would not make me any apology; but that if I thought myſelf injured, he was at my ſervice when properly called upon. I made him no anſwer, but immediately left him; and, on the *Thurſday* following, I wrote him a letter, telling him, that ſince he had done me the honour to aſſure me he would be at my ſervice whenever I ſhould call upon him, I expected he would meet me by dawn of day the next morning, near *Lowland-Church*, armed with a caſe of piſtols only. Mr. *Mills* ſent me an anſwer to this, and there were ſix letters in all paſt between, three from him, and three from me, which I do not now recollect, for I deſtroyed them *, though I believe I ſhall be able to remember the ſubſtance of them. The laſt I received from him was, that he would meet me at the Time and place appointed, which was *Frigate-Bay*. The night before the duel, I made my will at Mr. *O Donnell*'s, and delivered it to doctor *Webbe*. The doctor put it in his pocket without reading it, and we immediately went home to the doctor's houſe, where I went to bed ſoon after I arrived. At about one in the morning I heard the doctor up, and called to him. He anſwered me, and went out; and as ſoon as he came in and returned to bed, I got up and went with *Pope* to the ſtable, and ſaddled one of the horſes, which I immediately mounted, di-

* The priſoner, in a converſation he had with the publiſher, while he was under condemnation in jail, told him, that he had deſtroyed the original letters which paſſed between Mr. *Mills* and himſelf; but that he had preſerved copies of them, which copies he had put in a bottle, and buried in Mr. *Pinney*'s garden (where Dr. *Webbe* lives) at *Nevis*. So remarkable a circumſtance as this, had it been true, one would think could hardly have eſcaped him on his confeſſion in court. The omiſſion of this circumſtance therefore very juſtly calls in queſtion the genuineneſs of the letters inſerted in the narrative, and inclines one too reaſonably to believe, from that and ſome other obſervations in the letter of remarks, at the end of the narrative, that the letters which he has given for thoſe that paſt between Mr. *Mills* and himſelf, are the effect of an after-thought, and were probably *formed*, during his condemnation in jail, and ſent up by him with directions to bury them at *Nevis*.

recting

recting the boy to follow me, and rode very faſt 'till I paſſed Mr. *Pinney*'s, where I was overtaken in a very hard ſhower of rain that wet me through all my cloaths. I rode with all the ſpeed I could, 'till I came to *Molton's-Bay*, where I had ordered a canoo to wait for me. At firſt I could not perceive the negroes, but on looking round, I ſaw them lying under a ſail. They immediately got ready, and I jumped into the canoo, and ordered *Pope* to carry the horſe to *Bridwater*'s eſtate. The night was very tempeſtuous, and the canoo was ſeveral times near filling with water. I had a phial of rum with me, which I had filled at doctor *Webbe*'s, and finding myſelf exceſſive cold and chilly, I drank a dram of it. When I got to *Frigate-Bay*, I jumped out of the canoo, and ordered my boy to follow me with my trunk, in which were my piſtols. I then ſeated myſelf under a privet-hedge, and ſent my boy to the entrance of the *Baſſeterre* road, to wait for Mr. *Mills*'s arrival. In the mean time I examined my piſtols, and freſh primed one of them. I had no ſooner done this, than I heard the footſteps of a horſe. I aroſe immediately, and ſaw Mr. *Mills* riding faſt up to me. As ſoon as he came near, we ſaluted each other, after which he immediately alit, and took his piſtols out of the holſters, and primed them. While he was priming his piſtols, his horſe's head being between me and himſelf, I told him, I had, as I had wrote to him, brought down the letters he had wrote me, and I doubted not he had likewiſe with him thoſe I had wrote him. I then took out the letters from my pocket-book, and offered them to him: he made me no anſwer, but haſtily ordered his boy to lead away his horſe, and putting himſelf in a poſture of defence, preſented his piſtol at me. I gave his letters then to my boy, and ordered him, in caſe I ſhould drop, to give them to Mr. *Mills*; I immediately then preſented my piſtol at him; which he obſerving, cried out, ſtay, ſtay! I inſtantly dropped my piſtol, and Mr. *Mills* ſaid to me, ſtay, let me give the letters to the boy; which he immediately did, and then recovering his poſture again; himſelf on one ſide the road, and I on the other, we preſented our piſtols at each other. I obſerved Mr. *Mills* drew his piſtol near his eye, from which I imagined he was near ſighted. About four or five ſeconds after I had preſented, I fired; and Mr. *Mills* cried, Sir, you have killed me, you have killed me, Sir. I was extremely ſhocked to ſee him fall, and I went up to him and ſaid, Sir, I am heartily ſorry, I pray God to bleſs you, but I can ſtay no longer here. I then ordered his boy to take care of him, and immediately went down to the canoo and jumped in, and ordered the negroes to row as faſt as ever they could. I asked my boy, when we were in the canoo, whether Mr. *Mills*'s piſtol had ſnapped. He told me it had; but for my own part I neither heard it ſnap, nor ſaw the flaſh.

The letters Mr. *Mills* wrote me on this unhappy occaſion were extremely polite; and thoſe I wrote him were in as reſpectful terms as I was maſter of. It was Mr. *Mills*'s character, his rank and diſtinction in life, that engaged me in this unfortunate buſineſs; for I ſhould not have accepted a challenge from any man inferior to him.

For myſelf, my concern for the unhappy fate I ſhall ſoon meet with is little, compared to that I feel for the ſorrow and affliction it will bring on a tender parent; and the grief and anguiſh the conſequences of this unfortunate duel will occaſion to an unhappy lady, when ſhe hears the ſhocking news of her huſband's death.

I muſt, in juſtice to doctor *Webbe*, acquit him of any concern in the matter. He is perfectly innocent of the cauſe of my quarrel with Mr. *Mills*; neither did he know any thing of the duel, either before or after it. One gentleman was acquainted with it; a gentleman whom I asked to be my ſecond, which he refuſed. I beg to be excuſed mentioning his name, but he is neither of this iſland nor of *Nevis*.

I am obliged to your honours for the candour and impartiality you have ſhewn in the courſe of my tryal. You, gentlemen of the jury, I muſt acknowledge, have acted like upright honeſt men. Had I been in your place, I ſhould have found the ſame verdict you have done.

I have nothing now to aſk of your honours, but that you would pleaſe to allow me a little time, to ſettle my affairs, and to make my peace with God.

To which Mr. Preſident replied,

To be ſure you ſhall have a proper time allowed you.

On *Saturday* the twentieth of *January* 1753, the priſoner was executed at the town of *Baſſeterre*, according to the ſentence pronounced againſt him.

At the place of execution he delivered the following paper to the provoſt marſhal.

My friends and fellow ſubjects,

" You ſee me this moment a dreadful in-
" ſtance, how much the human mind may be
" led away and impoſed on, by falſe and empty
" notions affecting reputation in the eſtimation
" of weak and fallible men. Even ſo far as to
" commit the higheſt crimes in the ſight of
" God, and daringly to violate all human laws
" calculated for the good and ſafety of ſociety.
" Let my example be a means to teach men to
" act more conſiſtently with their reaſon; and
" let my puniſhment deter them from the com-
" miſſion of crimes like mine. And then my
" death, and that of the unhappy gentleman
" who fell by my hand, will, I hope, by the
" benefit the world will receive from the exam-
" ple, make ſome amends to the community
" for the loſs of two ſubjects, who might, had
" it not been for the unhappy fate which attend-
" ed them, have lived not unuſeful members of
" ſociety."

THE FOLLOWING

NARRATIVE

WAS SENT

By Mr. *BARBOT*,

A few Days before his EXECUTION,

TO

A GENTLEMAN in *Saint Chriſtopher's*.

To *J*——*W*——Eſquire.

SIR, *St. Chriſtopher's, Jan.* 12, 1753.

YOUR very favourable ſentiments of my unhappy caſe expreſſed to Mr. *Smith*, with your deſire that I ſhould give you a perfect narrative of every circumſtance that occaſioned and attended the untimely death of the worthy gentleman for which I am now capitally condemned, has engaged me, for your farther ſatisfaction, and the ſatisfaction of the world in general, to ſend you the following compleat relation of this melancholy affair, and of every circumſtance that occaſioned it.

It will be neceſſary, in order to give a better light into ſome of the occurrences, to premiſe, there ſubſiſted a very great intimacy between the family of *George Webbe*, ſenior, eſquire, at *Nevis*, and myſelf, and in particular with doctor *James Webbe*, for whom I had, on many accounts, a moſt affectionate regard. An eſtate belonging to this gentleman had been levied on by virtue of ſome executions againſt him, and was expoſed to ſale on the ſeventh of *November* laſt. There was great reaſon to imagine, on account of the ſcarcity of buyers poſſeſſed of property ſufficient to become purchaſers of ſuch an eſtate, it would be ſold at a great under value; for which reaſon the *doctor* and myſelf had been ſometime before that up to *Antigua*, partly to adviſe with council there, whether means could not be deviſed to defer the ſale, and partly on other accounts; and from the opinion we had received from thoſe gentlemen, doctor *Webbe* and ymſelf had conceived ſome faint hopes to effect his purpoſe. I was therefore ſurprized, on my arrival at *Nevis* from *Saint Chriſtopher's*, (where I had been after my return from *Antigua* on the ſixth of *November* at night) to hear that doctor *Webbe's* eſtate would inevitably be ſold on the ſucceeding day; eſpecially as I had heard nothing from doctor *Webbe* himſelf of the intended ſale. This made me impatient to ſee him on the morning of the ſeventh, to have from his own mouth a relation of what had occaſioned ſo ſudden a turn in this affair. I accordingly made it my buſineſs to meet him as ſoon as he came to town, which he did ſomewhat early. He was under much concern, and in great trouble; I deſired him to give me an account of what had occaſioned the ſale to be precipitated in ſuch manner, and if he had thought of any means to put it off, or what he intended doing. He replied, that judge *Herbert*, on ſome of the appraiſers refuſing to meet, had appointed others, *ex officio*; that he knew not how to put off the ſale, but that he had engaged Mr. *James Chapman* to be a bidder in truſt for him, to raiſe it up at leaſt to the ſum of four thouſand five hundred pounds ſterling, *and that he had particularly choſen Mr.* Chapman, *as he apprehended there might be ſome high diſputes at the ſale; for that as Mr.* Chapman *was a man of known reſolution, there was leſs reaſon to fear he would be brow-beat out of his purpoſe.* I aſked doctor *Webbe* if Mr. *Chapman* was come to town; he anſwered me no, but he expected him momently. This made me blame the *doctor* for

leaving Mr. *Chapman* before he had brought him to town, as I imagined it wrong to ſuffer a perſon to cool upon a propoſal of ſo weighty a nature. I adviſed him therefore to diſpatch a meſſenger or two directly, which I believe was done, to Mr. *Chapman*, to preſs him, in the moſt urgent terms, to come to town, agreeable to his promiſe. In the mean time I was directed by doctor *Webbe* to draw two bonds; one from himſelf to Mr. *Chapman*, with a warrant of attorney to confeſs judgment thereon immediately for the ſum of ten thouſand pounds ſterling, conditioned to indemnify Mr. *Chapman* on account of his becoming a bidder, and to repay him the purchaſe-money as ſoon as Mr. *Chapman* ſhould be compellable by law to pay it; and the other from Mr. *Chapman* to doctor *Webbe* in the like ſum, conditioned to aſſign over, and convey, the eſtate when purchaſed, to doctor *Webbe*, on his receiving the purchaſe-money, or being properly ſecured for the ſame; or to that effect. It was ſome time after the bonds were drawn before Mr. *Chapman* came to town; ſo long, that I almoſt deſpaired of ſeeing him; and as the time grew ſhorter, I obſerved the *doctor*'s anxiety to increaſe: however, at laſt he came; on which I adviſed the *doctor* directly to apply to him: it was with much reluctance that he did; expecting, I ſuppoſe, Mr. *Chapman* would have ſpoke firſt, as he had promiſed his ſervice. I eaſily perceived, when Mr. *Chapman* was applied to, he had much diffidence to engage in the affair, which made me adviſe the *doctor* not to loſe ſight of him; and I was employed to uſe every argument in my power to ſtrengthen him in his purpoſe. I ſhewed him the bonds, explained their nature; but all had little effect: at laſt he abſolutely refuſed to execute his bond, or to accept of the *doctor*'s; but he aſſured the *doctor* and me he would certainly bid for the eſtate, and if he ſhould become the purchaſer, he would afterwards ſettle it in ſuch a manner, as would be ſatisfactory: and now the drum was beating to aſſemble the people to the ſale.

There was in the auction-room a great number of gentlemen, who were ſeated on chairs; leaving the middle ſpace of the room quite clear. Among thoſe were *Mathew Mills*, eſquire, and Mr. *Cottle* an attorney, who, I found, was employed to aſſiſt the marſhal at the ſale; beſides numbers of other ſpectators in a ſhade without the room; when the marſhal put up the eſtate, and read the conditions of ſale, which were to this effect: That one third of the purchaſe-money ſhould be immediately depoſited in good bills of exchange, and the remaining two thirds in one month in the like bills of exchange, and in default of payment of ſuch remainder in that time, the third depoſited to become forfeited, and the eſtate to be re-expoſed to ſale. As I imagined theſe conditions were ſuch as could not legally be impoſed, and beſides, I knew Mr. *Chapman* could not comply with them, I thought it incumbent on me to object againſt them, which I did, partly on account of their novelty, and partly as they were ſuch as the law did not preſcribe. I ſaid the marſhal was no more than an inſtrument which the law had made on this occaſion, and that he had no right to preſcribe conditions, which the law warranted not; and therefore as the law mentioned nothing of depoſites, nor of forfeitures on ſuch occaſions, no bidder could be bound againſt his will by theſe conditions; nor ought they to weigh with any perſon who intended to bid for the eſtate; for the marſhal was, *ex officio*, obliged to declare the higheſt bidder the purchaſer. This occaſioned a few warm words between Mr. *Cottle*, the marſhal, and myſelf; and ſome confuſion in the room, when I imagined Mr. *Mathew Mills* might have deſired me not to *cavil*, to which I may have replied, *I expected to be treated like a gentleman*, but of this I have no recollection at preſent; *all I now remember, is, that the general clamour there was in the room againſt me, fluſtered me much, and, joined to the concern I was under on account of the diſtreſs of* doctor Webbe, *inclined me readily to take fire at any expreſſion which I conſtrued to the diſcredit of myſelf, or that of my friend, and determined me ſecretly to reſolve upon reſenting any affront I might receive upon the occaſion.*

As ſoon as the noiſe on account of my objections to the conditions was ceaſed, ſome gentlemen bid for the eſtate; and then I went out of the room into the ſhade, to know from Mr. *Chapman*, if he ſtill perſiſted in his reſolution, but I found he was determined to decline intermeddling at all in the purchaſe. *This ſtruck* doctor Webbe *in a manner motionleſs*, and as to myſelf, I ſcarce knew what to reſolve. The *doctor* looked at me for ſome time, and then asked me mournfully what he ſhould do? at laſt he ſaid, ſuppoſe you ſhould bid for the eſtate: alas, Sir! ſaid I, what hopes can reſult from that? can I give bills of exchange? I reflected however a little while upon the propoſal, and then I thought it might not be impracticable to get my bills indorſed for the third, and procure colonel *Webbe* to give the remaining ones; as I ſhould then have ſufficient to ſecure colonel *Webbe* by a mortgage of the eſtate; and my own effects would be ſufficient to ſecure the indorſer of my bills. I therefore told the *doctor*, to endeavour to procure an indorſer for my bills, and I would bid for the eſtate; as I would with the utmoſt willingneſs perform all that I could to ſerve him; *for to him, in a manner, I originally was indebted for the little I poſſeſſed, and therefore I would readily employ that little in his ſervice.* Upon this I went into the room, and, *I believe, to the ſurprize of every body*, bid for the eſtate. I think, at this inſtant, Mr. *Mathew Mills* directed himſelf to me, and asked me if I knew what I was doing? and deſired me to conſider we were not at *boy's-play*, or ſomething to this effect. As every one knew the motive of my bidding was to ſecure the eſtate ſtill in doctor *Webbe*'s hands, and as my incapacity to lay down ſo large a ſum as the purchaſe-money was well known, *moſt of the gentlemen from* Saint Chriſtopher's, *who were at the ſale, I believe, did not entertain the beſt opinion of the part I acted in this tranſaction, as they imagined it could only tend to the delay of juſtice*; and this opinion made ſeveral of them very clamorous againſt me. I was myſelf

ſelf ſo confuſed and perplexed, that I did not minutely attend to any particular perſon, but continued advancing over ſuch bidders who bid againſt me, and at the ſame time walking backwards and forwards from the room into the ſhade, and frequently I went to doctor *Webbe* to conſult him upon the ſteps I was taking, and to acquaint him with what I had to give as a ſecurity to any perſon who would indorſe my bills. While we were in the greateſt perplexity on this account, Mr. *Jacob Saunders* overhearing our diſcourſe, and being worked up to a high pitch of paſſion, by the clamours which were heard around againſt me, which he was pleaſed to ſay were the effect of *damned partiality*, (thoſe were his words) declared, he would indorſe my bills, *and ſee who would then think proper to refuſe them:* mean while I continued bidding for the eſtate, 'till I had raiſed the ſum to two thouſand five hundred and ten pounds *ſterling*, when none in the room ſeemed to incline to bid any more: and now the marſhal having, as I obſerved, firſt conſulted Mr. *Mathew Mills* and ſome other gentlemen, came to his place at the table, and declared me the purchaſer; when another warm diſpute aroſe between Mr. *Burnet* the marſhal, Mr. *Cottle*, and myſelf, on it's being inſiſted I ſhould ſign the conditions of ſale. This I a long time refuſed doing: I readily conſented to depoſit the bills for the third, but I imagined it was a great impoſition to force me to bind myſelf abſolutely by the conditions. I found at laſt I ſhould be either obliged to ſubſcribe them, or the next bidder to me, who would do it, would become the purchaſer: wherefore, after adviſing with doctor *Webbe*, who really directed me not to ſubſcribe them; and reflecting myſelf, that if I refuſed, I could expect no other than to ſee the eſtate torn out of his hands; and that this had, from the beginning, been a moſt litigious affair; and I fancied I had it now in my power to put an end to all diſputes at once, by an interpoſition in the *doctor*'s favour, both honourable and ſafe; I ſubſcribed the conditions, and ſat myſelf down to draw the bills. *Such was however the confuſion and hurry of my ſpirits, I could ſcarce write three words without miſtakes. My hands ſhook, and I was all over in a tremor*; for which reaſon I was obliged to ask of Mr. *Cottle* to draw them, which, either himſelf or Mr. *Peter Carew* did. Juſt as they were finiſhed, and I was going to ſign them, a noiſe was heard without, which drew every one out of the room, ſave myſelf, and one or two more. It ſeems the marſhal had arreſted Mr. *Edward Symmonds*, and he had reſiſted and eſcaped from him. In a little time Mr. *Mathew Mills* returned by himſelf, and came and looked over me to obſerve what I was doing. I was then going to ſign the bills, which were drawn either at three months, or ninety days ſight. He had no ſooner obſerved this, but he asked me *what I was about, did I know what I was doing?* "*Sir, you ſhall not be allowed to give the bills at* "*ſo long a ſight.*" To this I replied, "*Sir, I* "*don't apprehend you have any immediate right to* "*interfere in this matter. It is the marſhal's buſineſs; you are neither plaintiff, or defendant, in* "*any of the executions. But, Sir, I think it is no* "*unreaſonable ſight, three months, for ſo large a* "*bill; and ſurely you muſt know it to be cuſto-*"*mary to give bills for ſuch ſums at ſuch ſight.*" Mr. *Mills*, notwithſtanding this warmly inſiſting the bills ſhould be drawn at ſixty days, and I ſtill continuing to argue againſt it, at laſt he whiſperingly told me, "*Then, Sir, you are an* "*impertinent fellow*; his words at the time coming from him ſlowly, and his action altogether contemptuous. I made him no ſort of reply, and he directly went from me to Mr. *Burnet* the marſhal, and inſiſted the bills ſhould be drawn as he propoſed. I finding it would be in vain to diſpute the point any longer, and not judging it to be worth much contention, eaſily yielded to draw them for the ſixty days; though at the ſame time I was ſenſibly touched with Mr. *Mills*'s behaviour towards me, and was determined to have ſome explanation of his motives for treating me thus contemptibly.

I muſt here obſerve Mr. *Mills*, in whoſe company I had accidentally happened a few times before this unfortunate day, *had ever treated me with extreme politeneſs, and with great good nature.* As I had determined for *England* ſometime in the ſummer, and knew he was going likewiſe, I hoped to have an opportunity to cultivate an acquaintance with him; and had determined to have asked him to have permitted me to take a paſſage with him in the ſame veſſel. *As I ſat a great value on his eſteem, ſo any contemptuous treatment from him went nearer to my heart than it could poſſibly have done from another*; and this was one of the reaſons that induced me to act with him as I have done.

As ſoon as I conveniently could, without being obſerved, I went to Mr. *Mills*, while he ſeemed ſtanding unconcerned in the auction-room, and told him, I begged to ſpeak to him apart. On this he went with me into a ſort of dark entry between the two lower rooms of Mr. *O Donnell*'s tavern, juſt by the ſtair-caſe. I then, *in terms like theſe*, addreſſed him: that I was ſurprized at receiving ſuch treatment at his hands, eſpecially from a gentleman of his known politeneſs; that ſurely ſomething extraordinary muſt have determined him to have acted thus; had it been any one elſe, I ſhould ſcarce have regarded it; but his univerſal good character rendered it neceſſary for me to ask an explanation of his behaviour. To this he replied, he thought I had behaved impertinently, and that he knew not he was obliged to expoſtulate with me: if I thought myſelf injured, *he was at my ſervice at any time, when properly called upon.* I anſwered him no otherwiſe than by a low bow, and left him: I revolved ſome moments after, his whole behaviour; and it was with much concern I found, I muſt either determine to fight him, or ſubmit to be, in his opinion, the meaneſt wretch alive.

After I had left Mr. *Mills*, I went in queſt of doctor *Webbe* and Mr. *Jacob Saunders*, but found them not. I then went to Mrs. *Woolward*'s, to learn what was become of Mrs. *Daſent*, whom I intended to have waited on out of town. I was told ſhe was already gone. I returned to the tavern, where I met Mr. *William Daniel*, and with him I went to doctor *Scoles*'s; from whence I returned to Mrs. *Woolward*'s, to order the horſe to

be

be ſaddled for me. I learned there, that doctor *Webbe* was over the way at Mr. *John Saunders*'s; on which I went over to him, and found him talking about a negro of his which was to be tried on the morrow. I told him it grew late, and I was going out of town: I asked him if he had any commands; he made me engage to be in town early in the morning; and then, after a little ſtay, I mounted Mrs. *Daſent*'s mare, and rode out of town. Juſt above Mrs. *Weekes*'s cedar trees, I overtook Mr. *Stapleton Dunbar*, with whom I rode till we were beyond fig-tree church; when we overtook a large company of Mr. *Edward Symmonds*'s friends. The confuſed noiſe and clamour of this company, and the frequent appeals ſome of them made to me to judge of their diſputes, upon the legality of Mr. *Symmonds*'s arreſt, which, *in my then temper of mind*, I had not leiſure to attend to, made me ſpur on my horſe, and get away from them with what expedition I could, and proceed to Mrs. *Daſent*'s, where I intended to lodge, and where I arrived about nine o'clock at night. The whole family were retired to reſt, except Miſs *Nancy Herbert*, who came to me by Mrs. *Daſent*'s deſire, I believe, to be informed of what had happened at the ſale of the *doctor*'s eſtate. After I had anſwered her a few queſtions, I went into the bed-chamber, and, what with the fatigue of the preceding day, and the confuſed chaos of my mind, I ſoon ſunk into a profound ſleep.

The next day, early in the morning, I called on Mr. *William Daniel*, who had before engaged to accompany me to Mr. *Edward Symmonds*'s. From Mr *Symmonds*'s, Mr. *Daniel* and myſelf proceeded to town. We determined, I think, on the road, to finiſh our buſineſs in town as ſoon as poſſible, and return in the country, and dine with colonel *Webbe*. When I came to town, I found doctor *Webbe* and the proſecutor of his negro had made up their affair amicably, and the *doctor* had conſented to have his negro puniſhed. As this was all the buſineſs I had in town, I juſt told the *doctor* I was to dine with his uncle, and intended ſounding him about the eſtate; and that I would make uſe of ſome of our friends to obviate any objections he might make to comply with my propoſals; and that I promiſed myſelf a happy iſſue of my endeavours to ſerve him.

After this, Mr. *Daniel* and myſelf proceeded to colonel *Webbe*'s, where we arrived juſt as the family were ſeated to dinner. I turned the converſation purpoſely on the ſale of doctor *Webbe*'s eſtate; and it was with pleaſure I thought I perceived the good old gentleman's attention to me. I imagined he ſeemed ſatisfied with what I had done for his nephew's ſervice; and this, as I knew his great love for his nephew, almoſt inſured me ſucceſs in my ſcheme to ſerve him.

It may not perhaps be impertinent, as it may ſerve to convince the world of my intended honourable dealing in this matter, to relate what this ſcheme was. I had two great points in view; the one of which was, to reſtore myſelf to my father's favour, and procure a ſettlement from him in *England*; and the other, to ſerve the *doctor* to the utmoſt of my power. My father was offended *at my having idly ſpent him a conſiderable ſum of money in the years* 1748 *and* 1749, without any way benefiting myſelf from his aſſiſtance. I had now recovered my affairs, and was poſſeſſed of ſomething more than 800 *l. ſterling*, in outſtanding debts which were good, and other effects, clear of all demands. This I had acquainted my father of by letter, and likewiſe of my intentions to go home to him the next ſummer. In anſwer to which he had wrote me, that I muſt firſt convince him I was poſſeſſed of what I wrote, by placing the whole in his hands, and then he would *receive me as his ſon*, and act by me as became a father who had the welfare of his children at heart. I now thought the preſent opportunity favourable, both to ſatisfy him, and for my other purpoſes; and therefore had determined, if colonel *Webbe* agreed to it, to go home by the firſt opportunity; and, by his recommendation, and that of other of my friends, to procure Mr. *Coleman*, colonel *Webbe*'s correſpondent, to take up the bills I had drawn for my honour. In the mean time I would have appointed colonel *Webbe*, Mr. *Philips*, and Mr. *Saunders*, my attorneys, to collect in my debts, and remit the moneys as faſt as they were gathered in, to Mr. *Coleman*, to reimburſe him what he ſhould advance on my own account. Colonel *Webbe*, it was intended, ſhould draw for the remaining two thirds, or endorſe my bills, which would have anſwered the ſame ends; and, as a ſecurity to colonel *Webbe*, I was to have mortgaged the eſtate to him for the money he ſhould advance. All this done, doctor *Webbe* was to have a long leaſe of the eſtate, reſerving the intereſt for the rent, with a covenant obliging myſelf, my heirs, or aſſigns, to convey it back to him at any time, on his paying the principal money advanced for the purchaſe. I had great reaſon to believe my father, becoming an eye witneſs to this tranſaction, would be pleaſed with the part I had acted; and more ſo, with the credit it would procure me; and, perhaps, he might have been induced, rather than to have permitted me to be under obligations to ſtrangers, to have advanced the whole purchaſe-money himſelf, and have taken the eſtate into his hands, on the ſame terms I held it; whereby he would have become poſſeſſed of a conſiderable freehold here, which I, his eldeſt ſon, in due time might have inherited; and thus, a general ſatisfaction would have been given to all parties concerned.

But alas! how fragile and uncertain are human events! how eaſily are the beſt concerted deſigns overthrown and diſappointed! All my hopes were at once blaſted by Mr. *Mills*, *unfortunate gentleman! unhappily throwing himſelf in my way!* What anguiſh has this not occaſioned! I cannot, dare not repreſent to my mind, the torrents of miſery this has opened. How miſerable is mankind, when, for the ſupport of a good fame, even the beſt, the moſt generous of the human ſpecies, find themſelves impetuouſly drawn againſt their will, to act againſt the conviction of their conſciences. Who ſees not the idle and empty foundation on which the duellift builds? and yet, who has courage to withſtand the cenſure of the world, and bravely explode and deſpiſe the folly of its notions? So true it is, that all mankind, on theſe occaſions, would be cowards if they durſt.

But

But to reſume the thread of my narration. The reſt of the eighth of *November* was ſpent in amuſements of one ſort or other by the family. For myſelf, *I often ſought occaſions to be alone.* I reflected on the occurrences of the preceding day, and could find no ſort of excuſe for myſelf, not to look upon Mr. *Mills*'s expreſſions to me, as a challenge. His character I was no ſtranger to. I was certain, according to the received opinion on theſe occaſions, *an affair of this kind, with a man of ſuch univerſal eſteem, would rather add than take away from my reputation.* I repreſented to myſelf, that if I took no more notice of his treatment of me, he would certainly deſpiſe me. And on the contrary, *if we met, and either himſelf or I ſhould be ſlightly wounded, (which was far from improbable) in that caſe his generoſity would have prompted him to treat me with that reſpect and eſteem which all brave men entertain for each other; and then I ſhould effectually conciliate to myſelf the friendſhip of a gentleman of the greateſt worth, from motives which himſelf approved and thought worthy.*

Theſe, and theſe only were the motives, however miſtaken they were in themſelves, which induced me, on the morning of the ninth of *November*, to ſend a challenge to Mr. *Mills*, by colonel *Webbe*'s negro *Cæſar*, couched in the following terms.

Mathew Mills, eſquire.

SIR, *Stony-Hill, Nov.* 9, 1752.

I Expected, from the politeneſs of Mr. *Mills*, ſome ſmall apology, by way of reparation, for his late treatment of me, which was as injurious as undeſerved. But leſt you ſhould have reaſon to think me as contemptible as your words intimated, ſince you have done me the honour to aſſure me, you would be at my ſervice when properly called upon; permit me thus to call upon you, and to tell you, I expect you will meet me to-morrow morning, by dawn of day, near *Lowland Church*, and do me that juſtice from the mouth of your piſtol, you refuſed me when I expoſtulated with you. I ſhall be armed only with a caſe of piſtols, and attended by one negro. I need not tell Mr. *Mills* the neceſſity there is to deſtroy this, as I perſuade myſelf he will act becomingly on the occaſion.

I have the honour to be,

SIR,

Your moſt obedient ſervant,

J. B.

To Mathew Mills, *eſquire.*

The boy was directed to Mr. *Mills*'s houſe at *Molton's-Bay*, and I borrowed him, on pretence of ſending him in ſearch of my own boy *Nero*, from Mr. *Webbe*. I had not diſpatched the boy long, before I was deſired by Mr. *William Daniel* to accompany him to Mr. *Ottley*'s, and I propoſed walking thither; though, if I remember aright, we were offered horſes. It was about nine o'clock in the morning when we ſat out, and we ſtaid at Mr. *Ottley*'s about an hour, or ſomething more. What makes me ſo particular and certain it was the *ninth*, is, becauſe I well remember I ſent the challenge that morning; and that I was particularly inquiſitive at Mr. *Ottley*'s about Mr. *Mills*; for after ſome of the ladies had finiſhed ſigning a ſong at Mr. *Daniel*'s deſire, I purpoſely addreſſed myſelf to Mr. *Ottley*, and enquired of him, if Mr. *Mills* was ſtill on the iſland, and when he intended down: to which he anſwered, he was going to *Saint Chriſtopher*'s that day. I remember likewiſe Mr. *Ottley* told me, he thought I had made a cheap purchaſe of *Bridgwater*'s eſtate.

Mr. *Daniel* and myſelf returned directly from Mr. *Ottley*'s to colonel *Webbe*'s, where I ſtaid 'till about two o'clock in the afternoon. Mr. *Webbe*'s family were invited to his ſon's to dinner that day with Mr. *William Daniel*. Mr. *Joſiah Webbe*, in complaiſance to me, was pleaſed to ſtay at home. After dinner a horſe was ſaddled for me, and I rode to Mr. *Joſiah Webbe*'s at *New River*, with an intent chiefly to acquaint him with my intentions relating to his brother's eſtate, and to get him to uſe his intereſt with his uncle to further them. I was prevented, however, from opening to him my purpoſe, by a meſſenger who came to me from Mrs. *Daſent*, informing me Mrs. *Hickman* lay at the point of death, and deſiring me to make all poſſible haſte to her, that I might be with her time enough to make her will. I accordingly mounted my horſe directly, and was at Mrs. *Hickman*'s before tea-time. *It is while I write this, I juſt remember a circumſtance that has refreſhed my memory ſo far, as to make me certain I was not at colonel* Webbe's *on the tenth of* November; though I ſolemnly declare, at the time of my tryal, and 'till within theſe ten minutes, I could have taken upon myſelf, with a ſafe conſcience, to have ſworn (as I when I made my confeſſion I declared) I was there. Had my life or death ſolely depended upon that point, I would readily have ventured the iſſue; ſo confident, ſo aſſured was I, of the truth of that fact: and yet, juſtice to Mr. *William Herbert* and Mr. *Brodbelt*, who certainly ſpoke the truth, juſtice to myſelf and the world, oblige me to declare, upon a more perfect recollection, I was not; *tho' I believe in my conſcience (moſt ſolemnly I ſpeak it) Mrs.* Lowman, *Mr.* Joſiah Webbe, *and* Cornelius, *thought they were in themſelves aſſured they ſpoke truth.* For my own part, I do aſſure the world, at the time of my confeſſion, I was not more convinced that two and two make four, than that I was at Mr. *Webbe*'s, on *Friday* the tenth of *November*, at dinner. The reaſons that now as firmly make me believe the contrary, are theſe.

The ninth, that is, the *Thurſday*, I well remember to have wrote my firſt letter to Mr. *Mills*. In my way from Mr. *Joſiah Webbe*'s to Mrs. *Hickman*'s, I remember to have met my boy. I was on Mrs. *Daſent*'s mare, but had made Mr. *Webbe*'s boy follow me with Mr. *Webbe*'s horſe. On ſeeing my boy, as I was under ſome apprehenſion Mr. *Mills*'s letter, or meſſage, to me ſhould be delivered into other hands beſide my own, I ordered my boy to take Mr. *Webbe*'s horſe home, and wait *Cæſar*'s arrival, and bring the letter *Cæſar* might have for me, to me at Mrs. *Hickman*'s. This the boy

did towards the dusk of the evening. The letter was in the terms following.

SIR, *Moulton's-Bay, three o'clock in the afternoon.*

I MUST own I am ſurprized to receive ſuch a letter from you, at a time you muſt have imagined I could not be on this iſland; and nothing would have detained me here thus long, but the favour of ſome friends, who have given me their company to dinner, and with whom I am juſt going to *Saint Chriſtopher*'s. Some *Antigua* gentlemen are hourly expected there; and ſhould I refuſe going, (as my obligations to my *Antigua* friends are well known) the reaſon might probably be ſuſpected. You may depend it ſhall never be known from me, and that, on my return to this iſland, which will be ſoon, I will give you the meeting you deſire.

I am, SIR,

Your humble ſervant,

M. M.

To Mr. Barbot.

And this circumſtance convinces me I was not at Mr. *Webbe*'s on the tenth; becauſe, from Mrs. *Hickman*'s at night, I walked to Mr. *Maynard*'s. *I know not if I ſlept at Mr.* Maynard's *or at* Saddle-Hill; *but this, I think, I am ſure of, that on the tenth I dined either at Mr.* William Maynard's, *or at Mrs.* Daſent's *houſe at Saddle-Hill by myſelf; though I am apt to think the latter,* as I had a bill in chancery to prepare in her behalf; which I was by oath obliged to prepare and file as ſoon as poſſible. The eleventh I think I dined at *Saddle-Hill*, and in the afternoon walked over to Mr. *Henry Herbert*'s, and in the evening returned to *Saddle-Hill*. I believe doctor *Webbe* came to *Saddle-Hill* that night after I was a bed. In the morning of the twelfth, which was *Sunday*, a little after we aroſe, *I purpoſely introduced a diſcourſe to the* doctor, *concerning major* Daſent's *piſtols*, and asked him which were the caſe with which he had fought Mr. *Peterſon*. He took down both caſes (for there were two in the room) and ſhewed me them. I ſeemingly wondered how it was poſſible to miſs a mark at ſo ſmall a diſtance as that in which I had heard they ſtood, and, if I recollect aright, *I propoſed to exerciſe the piſtols, to experience myſelf the nature of them, which the doctor agreed to.* I remembred in the ſtudy to have ſeen a box filled with cartridges, and I immediately went into the ſtudy, and brought it out. We ſent one of the ſlaves to look for a beef-barrel, and a little one ſide of the path, leading to Mr. *Edward Symmonds*'s, on a riſing ground covered by a rock, I ordered the barrel to be placed. A ſmall center was marked on the barrel-head with chalk, at which we fired. I fired firſt, and, I think, miſſed the barrel, tho' we were not above ten yards off the mark. The *doctor* fired next, and, making a tolerable ſhot, I pretended I would fire 'till I made a ſhot as good as his; and thus, whenever he grew tired of the diverſion, I contrived ſome pretence to continue it, 'till we had expended all the cartridges which would fit the bore of the piſtols. When we had done, the doctor gave the piſtols to *Mattais*, a ſlave of Mrs. *Pym Daſent*'s, and ordered them to be cleaned and put up *.

I muſt candidly own *my reaſon for propoſing this diverſion* was, ſolely on account of my intended meeting with Mr. *Mills*, becauſe I was totally ignorant of the practice, having never fired a fire-arm with ball before. I was likewiſe willing to experience their nature, thereby to form a judgment of the probability of hitting a mark at the uſual diſtance.

We had partly at this exerciſe, and in converſations relative to my purchaſe of the eſtate, paſſed the morning, till it was time to dreſs. I intended dining at colonel *Webbe*'s, and accordingly did. The *doctor* left me in the evening at his uncle's, as well as I remember, and I returned to *Saddle-Hill*; between which place and Mr. *Maynard*'s, I paſſed my time till *Thurſday* morning the ſixteenth, ſave only on *Tueſday* the fourteenth, when I went to doctor *Webbe*'s with Mr. *Daniel*. The *doctor* was not at home: I ſent for Mr. *Calder* from thence, the deputy ſecretary, who came and dined with me at the *doctor*'s, and I gave him the bill in chancery to file, which I had before been drawing. It was one of the days, *between the eleventh and ſixteenth, I wrote to Mr.* Mills. *If I recollect aright it was the eleventh of the month on which the letter was dated, and the twelfth or thirteenth* that my boy went down with that and ſome other letters to *Saint Kitt*'s. My letter was to the following effect.

SIR, *Nevis, Nov.* 10, 1752.

I AM obliged to you for the readineſs you expreſs to give me an opportunity of doing myſelf juſtice on this occaſion. I aſſure you I knew not of your intention of leaving this iſland thus early, or I ſhould not have been ſo late in my application to you. I ſhall wait here your return, and ſhall be ready, at the firſt intimation, to attend you wherever you ſhall appoint, to put an end to this affair.

I am, SIR,

Your moſt obedient ſervant,

J. B.

Mathew Mills, *eſquire.*

To this letter Mr. *Mills* returned an anſwer, *dated the fifteenth*, in the following terms, which came to my hands at Mrs. *Daſent*'s the ſame day.

* I had almoſt omitted an incident which happened this morning. Mr. *Edward Symmonds* came to Mrs. *Daſent*'s with ſeveral perſons armed with piſtols, *&c.* and either brought or took away ſome furniture belonging to him. He had in his pockets a number of bullets, which he ſhewed the *doctor*, and I deſired the *doctor* to ask ſome of him, (which he did) in order to amuſe ourſelves with the piſtols at another time. The bullets I put in one of the drawers of an eſcritoir, in the chamber, where there are now ſome remaining. It was with two of theſe I loaded the piſtols.

SIR, *Novemb.* 14, 1752.

YOUR favour is but this moment come to hand. The *Antigua* gentlemen are arrived, and will detain me here longer than I expected. I could therefore wish you would so order your affairs, as to come down to this island, that I may have an opportunity of doing myself that justice, which I am determined to have from you before I go to *Antigua*, to which place I am soon going with the gentlemen who are down here. Whatever be your resolution, let me know it as soon as possible, and be careful not to divulge it, otherwise we may possibly be prevented.

I am, SIR,

Your most humble servant,

M. M.

To Mr. Barbot *in* Nevis.

I left Mrs. *Dasent*'s the sixteenth in the morning, and before I went away put the best case of pistols into my trunk, with some powder and five ball, and locked it, and directed my boy to carry the trunk to the *doctor*'s. From Mrs. *Dasent*'s, accompanied by Mr. *William Daniel*, I went to doctor *Webbe*'s, where we dined, and in the afternoon I went to town. From town Mr. *Daniel* and myself went to Mr. *William Herbert*'s; there I found the company were inclined to hard drinking, which occasioned me to slip away from them, about half an hour after I had come there. From thence I returned to doctor *Webbe*'s; he was not at home, nor had he been at home the whole day. It was late before I arrived at the *doctor*'s. I think Mrs. *Sutton* *, and doctor *Potts*, were at supper. I sat down with them, and the *doctor* came home about an hour after. I remember he shewed me a letter he had received from his brother, acquainting him with his having seconded to the utmost of his power, and Mr. *Maynard* likewise, a letter I had wrote to colonel *Webbe* about the purchase of the estate; and that the old gentleman made some difficulty to come into our proposals. We had some talk upon the subject of this letter before we went to bed; and of the methods to overcome the good old gentleman's scruples. But I had almost forgot to mention it was this day while in town, I engaged the canoo from Mr. *Hulburd's Peter* to be ready for me on *Saturday* night. On the *Friday* morning, I mentioned to the *doctor* a proposal I had to make to Mr. *William Mills* from Mr. *Edward Symmonds*, and that I was just going to dispatch my boy to Mr. *William Mills* with it. I likewise told him of the steps I had taken to prepare for my intended voyage to *England*, and that I wrote to captain *Fleming* before by judge *Herbert* to secure a passage. This I did to prevent any inquiry on account of my boy's going to *Saint Kitt*'s, where I sent him with my last letter to Mr. *Mills* in these words:

* Doctor *Webbe*'s house-keeper.

SIR, *Novemb.* 17, 1752.

I COULD have wished, for some reasons more respecting the circumstances of my situation in this island than any thing else, our affair could have been determined here. But as I would willingly remove every obstacle in my way to doing justice to my reputation, and act in such manner as would be most convenient to yourself; I am determined to meet you on *Sunday* morning next by the dawn of day, near the beach of *Frigate-Bay*, to which place I shall come down in a canoo, appointed, as I mentioned in my first letter to you on this subject. I have chosen this place as the most convenient for our purpose, and the time when people are generally indulging themselves with rest from the labours of the preceding week. I shall bring with me the several letters I have received from you on this occasion; and I hope you will likewise have with you such as you may have of mine undestroyed.

I am, SIR,

Your most humble servant,

J. B.

To Mathew Mills *esquire.*

When I had dispatched the boy with orders to hire a canoo immediately to go down with the letters; the *doctor* and myself sat down to back-gammon or piquet, and in one trifling amusement or other we passed the day. Early the next morning I charged the pistols. I had particularly observed, when I fired the pistol at the barrel-head, and charged them with cartridge, the paper of the cartridge frequently penetrated with the ball, for which reason I took particular care in loading the pistols, that the wadding should be free of the ball, so as not to be intangled round it, left a wound from the ball might thereby be rendered more dangerous.

When the pistols were loaded I put them into the trunk, with a night-gown and a phyal of rum, and locked it; and as we were engaged to dine at Mr. *Jacob Saunders*'s, in order to give him some security for the bills he had indorsed; I desired Mrs. *Sutton* to send the boy after me (if he should come) to Mr. *Saunders*'s, and tell him to bring the trunk. When this was done, the *doctor* and myself went to Mr. *Saunders*'s. After dinner we gave Mr. *Saunders* a joint and several bond to indemnify him from the bills, and I gave him a list of such debts as he, with the rest of my attornies, was to collect in, during my absence. When this transaction was ended, my boy came in with the trunk and four letters; one from *Mathew Mills*, esquire, one from Mr. *William Mills*, one from Mr. *Francis Phillips*, and the other from Mr. *John Mahon*. That from Mr. *Mathew Mills* was as follows:

SIR,

SIR, *Novemb.* 18, 1752.

I SHALL certainly meet you at the time and place appointed.

And am, SIR,

Your humble ſervant,

M. M.

I haſtily ſlipped Mr. *Mills*'s letter in my pocket, and ſhewed the others to the *doctor*, eſpecially that from doctor *William Mills*. I waited for an opportunity to go aſide to read Mr. *Mathew Mills*'s note, which, when I had done, I directed my boy immediately to proceed to town with the trunk, and go to *Peter* and ſee that the canoo ſhould be got ready. After tea the *doctor* and myſelf rode to Mr. *Edward Paris*'s, where we ſtaid about half an hour, and then proceeded to town. The converſation from Mr. *Paris*'s to town turned upon my intended voyage home. I told the *doctor* I would at all events *make a will, or elſe execute a deed to himſelf and Mr.* Saunders, that in caſe any accident ſhould happen to me in the voyage, yet ſtill the eſtate ſhould be properly ſecured for his and Mr. *Saunders*'s benefit, in caſe the bills ſhould be proteſted; and otherwiſe to ſecure them for the uſe of ſuch perſons I ſhould intend them. *I mentioned to him I would make him an executor to my will*, and thereby, whatever debt might be due from him to me would be remitted. When we came to town, we ſtopped at Mr. *O Donnell*'s tavern, and as I recollected there would not be witneſſes enough for a will at the *doctor*'s, and I thought it highly neceſſary to make one (as I knew not whether I ſhould be living on the morrow) I called for paper, pen and ink, and ſat down to draw the will. While I was drawing it, *I frequently called to the* doctor, *and deſired him to procure three witneſſes*, and carry them into the back-room. I was a little impatient and deſirous to know whom he had got. He propoſed two or three perſons to me, whom I did not approve of; and that was the reaſon of his going and coming ſo often. At laſt he acquainted me he had got one *Springett*, with doctor *Potts* and Mr. *O Donnell*. I approved of theſe three, and went into the room, *and executed the will* in their preſence. I carefully doubled down the top of the paper, ſo that no writing appeared more than my name, and the words (*in the preſence of us.*) I haſtily repeated the words *publiſh and declare*, and the witneſſes ſuſcribed their names. When that was done, I folded it up, and deſired the *doctor* to put it in his pocket, which he did *without reading it*. That circumſtance, I doubt not, induced him to ſwear he knew not whether it was a will or deed, tho' *to be ſure he muſt have judged it to have been a will, both from the number of witneſſes, and the converſation* (*if he had recollected it*) *coming to town*. I have anticipated a circumſtance, which was that of going to *Peter Hulburd*, and recommending to him to be with the canoo, my boy and trunk, by midnight, at Mr. *Charles Payne*'s bay. This happened a little before I went to the tavern, and he faithfully promiſed me to be there.

When this was finiſhed, we mounted our horſes and went home. Very little converſation paſſed in our way. I kept muſing behind, and in that manner we jogged leiſurely on till we got home. Mrs. *Sutton* told the *doctor*, that *James*'s dictionary had been brought home that day. As theſe books were a novelty to us both, they employed us about an hour curſorily peruſing them here and there. When I had amuſed myſelf with one of the volumes for ſome time, I got up to order the *doctor*'s negro *Pope* to ſleep in the porch, and keep one of the ſaddles and furniture in order, and to ſay nothing to any body, and I would give him a dollar: and when I had, with the utmoſt privacy, concerted every thing for my departure, I wiſhed the *doctor* a good repoſe, and retired into the chamber. I juſt threw myſelf upon the bed with my cloaths on. I ſlept 'till about twelve or one o'clock, when I heard ſome one ſtirring in the houſe. I ſtarted up, and aſked who was there? the *doctor* anſwered me, it was him. I aſked, what made him up at that time? he told me he had a lax. I farther enquired what he thought it o'clock? he replied, he believed, about one. As ſoon as he was gone, and every body were compoſed again, I ſlipt out of the chamber, waked *Pope*, and went with him to the ſtable, and helped him to ſaddle a horſe, which I immediately mounted, and directed the boy to follow me. I rode faſt 'till I paſſed Mr. *Pinney*'s, and then was overtaken in a very hard ſhower of rain, that wet me through all my cloathes in a few minutes. As there was no ſhelter, I puſhed through with all the ſpeed I could; and the ſhower was not over 'till I got to *Molton's-Bay*. I was aſtoniſhed as I rode along the bay to perceive no ſign of a canoo, which put me for ſome time in a great rage. I was juſt going to gallop to town to know the reaſon, when I bethought myſelf of proceeding a little further down the bay. At laſt I eſpied a canoo, but it ſeemed to me to be at a grapling without hands; on looking round, I perceived the negroes under the ſhelter of a ſail I waked them, and found they were thoſe I had hired. They ſoon got the boat in readineſs, and I jumped into her ſtern, at the ſame time ordering *Pope* to lead the horſe to *Bridgwater*'s eſtate, and, as he valued his life, not to ſay a word of me to any ſoul whatever.

The night was very tempeſtuous, and as we paſſed the *Narrows*, our canoo at one time was near filled. We were under great difficulties ſeveral times to keep the canoo above water. My greateſt concern was to preſerve the trunk with the piſtols dry, and to hearten the negroes to proceed with me to the appointed place.

When we came oppoſite to *Frigate-Bay*, I ordered the negroes to put me on ſhore in that part of the bay neareſt the *Salt-ponds*. I was ſo wet when I landed, I found myſelf under a neceſſity of walking to keep myſelf warm. I therefore directed my boy to follow me with the trunk, and I walked from the bay to the *Baſſe-*

terre

terre-road, and back again ſeveral times. I adviſed *Peter* to do the ſame, on account of the great regard I had for his maſter, leſt he ſhould get cold; but he declined it. When I had recovered a little warmth, and my cloaths were partly dry, I went and ſeated myſelf under a privet-hedge, about four yards from the corner of the path, and ſent my boy to the entrance of the *Baſſeterre*-road, to wait Mr. *Mills*'s arrival, and to conduct him to me. In the mean time I examined my piſtols, and freſh primed one of them. I had not been long in this ſituation, when the day juſt began to dawn, and about five minutes after, I heard the footſteps of a horſe. Immediately on this I aroſe, and walked into the road, where I perceived Mr. *Mills* advancing towards me *at a round trot*. As ſoon as he approached me, we ſaluted each other; after which he immediately alit off his horſe, and with much precipitancy took his piſtols out of the holſters, and clapping a piſtol under his left arm, he primed one piſtol, and ſo the other. While he was priming his piſtols, his horſe's head being then between me and himſelf, I told him I had, as I had wrote to him, brought down with me the letters he had wrote me on that occaſion, and that I doubted not he had likewiſe with him thoſe I had wrote him; I then took out the letters from my pocket-book, and offered them to himſelf; but Mr. *Mills*, without replying to me, haſtily turned about, and ordered his boy to lead away his horſe, and putting himſelf in a poſture of offence, preſented his piſtol. I gave his letters then to my boy, and ordered him, in caſe I ſhould drop, to put them into Mr. *Mills*'s hand. I had before determined with myſelf to have expoſtulated with him, but this his haſty action intirely put it out of my power; beſides that, I reſented his behaviour, which I began to accuſe. This was however without reaſon; for obſerving me to level my piſtol at him, he ſternly cried to me, *Stay, ſtay*; on which I immediately dropped my piſtol, when Mr. *Mills*, in an affable tone of voice, ſaid, *Stay, let me give the letters to the boy*, which he immediately did, and then recovering his former poſture, himſelf on one ſide of the road, and I on the other (inclining a little obliquely) we preſented our piſtols at each other. I obſerved Mr *Mills drew his piſtol near to his eye*, which made me imagine him ſomething near ſighted at the time. About three or four ſeconds after I preſented, I fired; and Mr. *Mills*, unfortunate gentleman! received my ſhot. He immediately cried, *Sir, you have killed me, you have killed me, Sir*; and then gently fell back into the middle of the road. When he fell he held a piſtol in each hand, and often threw with a gentle motion one hand acroſs the other. I was much concerned at the melancholy ſpectacle, and almoſt motionleſs at the ſight. I juſt told him I was moſt ſincerely ſorry; I prayed God to bleſs him, and that I could not ſtay to afford him any aſſiſtance. I then called his boy, who, I think, ſeemed fearful to approach me, and ordered him to take all poſſible care of his maſter. As ſoon as I perceived his boy with him, *I reſpectfully bowed to him, and took my leave of him*, with a heart that truly lamented the untimely end of ſo brave, ſo good a gentleman: for though he had yet life and ſpeech when I left him, I feared, from the manner of his fall, and the faintneſs of his voice, he would ſoon be no more.

I immediately went down to the canoe. I think the negroes were upon their oars. I remember my trunk had like to have been forgot in the hurry; but my boy recollecting it, ſtepped out again, and brought it with him. I deſired the negroes to row with all their might from the ſhore; and looking back after we were about two hundred yards from the ſtrand, I thought I perceived ſomething which appeared to me to be a man. I mentioned this to the negroes, who looked likewiſe back, but ſaid they took it to be a rock. *The ſun was juſt then about riſing*. This, however, made me take the precaution immediately to ſlip on a great coat belonging to one of the negroes, and put on one of the negroes hats; and in this diſguiſe, muffled in the cape of the coat, I continued 'till I landed at *Nevis*. I think we paſſed near two veſſels, one by the *Salt-ponds*, and the other in the *Narrows*; but I was well aſſured none on board the veſſels could diſtinguiſh me ſo as to know me. I had the curioſity, as we were rowed up, to aſk my boy (who only among them all had ſeen what had happened) whether Mr. *Mills* had ſnapped his piſtol? He replied, he had ſeen his [Mr. *Mills*'s] piſtol flaſh. I muſt own if it did ſo, I neither heard the click of the hammer, nor ſaw the fire.

I was landed juſt under the cover of ſome manchioneal trees near *Lowland-Church*, and as I, on looking round, ſaw no appearance of a human creature, I threw off my diſguiſe, and jumped a-ſhore. Afterwards I ordered my boy to proceed the bay-way, and meet me at doctor *Webbe*'s; and I walked towards *Bridgwater*'s, having given a ſtrict charge to the negroes to conceal their knowledge of what had happened. When I came to *Bridgwater*'s eſtate, I found *Pope* there, and ordered him to ſaddle the horſe immediately, and ſhew me the neareſt way to his maſter's, which he did; and I arrived at the *doctor*'s, I believe, about eight in the morning. The *doctor* and Mr. *Potts* were ſhaving in the porch, and Mrs. *Sutton* was at the tea-table in the hall. I walked in with ſeeming unconcern, and no one took any notice of me. As I went into the hall, I aſked Mrs. *Sutton* if ſhe was making breakfaſt without me? ſhe told me no, and that ſhe was juſt going to make me ſome tea. I then went into the bed-chamber, and haſtily pulled off my cloaths, and ſlipped on a night-gown; and as ſoon as poſſible I ſhifted my dreſs, and put on dry linnen. My cloaths were of a colour that ſhewed not the wet, but I was afraid, leſt any one ſhould touch me, and aſk the reaſon of their being damp. By the time I was dreſſed, Mr. *Potts* was juſt going to mount his horſe, and doctor *Webbe* asked me, if I intended dining at his uncle's? I replied, yes; and that I expected he would accompany me: he ſaid, he could not prevail on himſelf to dine there, as he could not be preſent with his uncle when the matter of the eſtate ſhould be preſſed

to him; but that he would dine at Mr. *Maynard*'s, and come there in the afternoon; but we agreed to ride together, as far as the path leading to Mr. *Ottley*'s.

It was a little while before I dreſſed myſelf, while I had on a night-gown, I took the piſtols out of the trunk, and drew the charge of one of them, and then carried them covered with the night-gown to doctor *Webbe*'s *Tom*, and ordered him to clean them; at the ſame time I directed *Nero*, my boy, to take up my dirty linnen and put them in my trunk, and wait till *Tom* gave him the piſtols; and then carry the piſtols, trunk, and all together to Mrs. *Daſent*'s, and return the piſtols in the bags, and put them in their uſual place; and to do this with the utmoſt caution, for fear he ſhould be obſerved.

It was, on account of the long time doctor *Webbe* took up in dreſſing, near twelve before we mounted. The converſation on the road turned on the ſubject of the letter I had wrote colonel *Webbe*, and in deviſing the means to make the propoſals ſucceed; as they were undoubtedly ſuch that the good old gentleman would be very ſecure in accepting.

We parted near Mr. *Ottley*'s, and I went ſtreight to Mr. *Webbe*'s. I found the family at dinner, and I affected to maintain my uſual chearfulneſs, frequently addreſſing myſelf to the ladies, and recounting ſome occurrences which had paſſed lately at *Antigua*, relative to one of the ladies who was then at the table. After dinner the ladies retired into a little houſe built by Mrs. *Fenton*, and I accompanied them. I was in this houſe reclining on a bed, when Mrs. *Henrietta Daſent* received a letter from Mrs. *Ottley*, I ſuppoſe, acquainting her with the melancholy accident, and the part I had acted in it. She changed her countenance directly, and called to Miſs *Molly Butler* in theſe terms, "*Good God*, Molly, "*read here*"! On this Miſs *Molly* got up and read the letter. I ſaw much confuſion in their countenances, and Mrs. *Daſent* ſaid, "*Say not* "*a word, or the man will ſuſpect.*" They then went into a room where the gentlemen were ſeated round a table. I obſerved ſome of them came out, and the reſt of the ladies run to hear the news. As it was communicated from hand to hand, the faces of the whole company wore a diſmal gloom, and ſeveral looked at me ſtedfaſtly, with looks that beſpoke wild aſtoniſhment and amaze. I was ſtruck deeply at the *conſciouſneſs of my own thoughts*; but affecting as much unconcern as poſſible, I enquired of Mrs. *Daſent* what diſmal news ſhe had communicated that could affect every body in this manner? She replied, "*Mr.* Mathew Mills *is dead, do* "*you know any thing of it, Sir*"? I returned, *No, Madam, I have heard nothing of it. I am very ſorry for it.* I could not bear to ſpeak longer on the affecting ſubject, ſo walked to the great houſe, which Mr. *Webbe* is now erecting. I there penſively walked by myſelf backwards and forwards; at laſt the old gentleman came to me and asked me, if I did not ſleep at the *doctor*'s the night before, and come from thence this morning? I anſwered him without heſitation, yes.

The old gentleman then left me, and I walked into the yard, when a gentleman came and whiſpered me, that I was the perſon ſuſpected, and that I had reaſon to take care of myſelf. This plainly intimated to me, the officers of juſtice were in ſearch of me, and partly becauſe I thought it would be too great a ſhock to a family, who I knew eſteemed me, and partly becauſe I had not fully determined what meaſures to purſue, I ordered my horſe to be immediately ſaddled, and rode down to Mr. *John Herbert*'s, as I expected to find him from home; ſo that I might have more leiſure to determine, or at leaſt to find him alone without company. When I came there, himſelf, his ſiſter and niece were at home, and the ladies were about preparing tea. I asked of Mr. *Herbert* to lend me a boy, which he did; and I immediately diſpatched a note to doctor *Webbe*, deſiring him to come immediately to me, for that I wanted him upon an affair of moment. I ordered the boy not to ſay he came from me, and to tell no one I was at his maſter's. The *doctor* ſoon after came, and I took him aſide into the neceſſary-houſe, and asked him if he had heard a report of my having murthered Mr. *Mills*? He anſwered me, yes. I told him there was nothing in it, as he himſelf muſt know; that I was determined to ſtand the event, and I could not be affected by it. While we were thus talking, he looked out and perceived the *poſſe* coming in ſearch of me. I then haſtily prepared to meet them, and ſeeing Mr. *Ouchterlony*, I ſurrendered myſelf into his hands, ſaying, *Sir, as you are a gentleman, I expect to be treated by you as ſuch.* He replied, *I might be aſſured he would.* I then begged leave to go into the houſe, and I took the *doctor* on one ſide, with permiſſion of the officers, and deſired him, as I was bare of money for the preſent, to procure his uncle to ſend me ten piſtoles that night to town, which he promiſed me he would take care and ſend me.

From Mr. *Herbert*'s, in complaiſance to ſome gentlemen who were on foot, I walked to the preſident's, and was by Mr. *Dunbar* committed to goal. I have great thanks to return the preſident and Mr. *Dunbar* for their honourable and candid uſage of me, and for their generous care to protect me from inſult in my way to the priſon from the preſident's houſe.

In the goal at *Nevis* I was treated with much humanity and tenderneſs by Mr. *Burnet* the marſhal; indeed I thought I had ſome reaſon to ſuſpect the candour of his behaviour, but on reflection I now think his affection for Mr. *Mills*'s memory, and his regard for me, as well on account of the friendſhip which had ſubſiſted between us, as in compaſſion to my circumſtances, occaſioned his converſation to turn ſo frequently upon the unhappy accident, and to ſpeak of it in ſuch moving terms, as made me at the time apprehend it was with deſign to catch at unguarded expreſſions, which might have dropped from me in the courſe of our converſations; eſpecially, as I was obliged to keep a conſtant watch on my words, as I ſcorned to deny in direct terms the part I had acted in this unhappy affair; only declaring, that I had done nothing which was baſe,

baſe, or unworthy of the character of a gentleman.

I think, Sir, to this period is all I have to declare any way material to this tragedy, in which it has been my misfortune to be ſo great an actor. I have been very circumſtantial in many points, which may, perhaps, ſeem to have no immediate connection with the principal ſubject; yet, I hope I have not been impertinently tedious; becauſe I think they tend to give a proper light into ſeveral parts of the evidence which was delivered at the tryal, and account for the motives of ſeveral actions, which have been, perhaps, miſunderſtood, and ill judged on.

It might perhaps be expected, as I have given a long detail of the ſale of doctor *Webbe*'s eſtate, I ſhould inform the world what turn that affair took after my being apprehended. I ſhall juſt declare, colonel *Webbe*'s affection for his nephew has generouſly induced him to pay the whole purchaſe, and doctor *Webbe* now poſſeſſes the eſtate, I hope, by a tenure more ſecure and laſting than ever. *He has my hearty wiſhes to proſper in every honeſt and honourable undertaking, and this, I dare affirm, is the extent of his own deſire.*

I hope the world will not cenſure me for having given this ample account of theſe occurrences, *nor imagine it was the effect of weakneſs or dejection of mind. My only motive was, by a detail of the facts as they really happened, to vindicate my own character and that of my friend,* and to convince the world, baſeneſs, malice, and revenge, were not the principles of my actions. On the contrary, that I was induced to ſeek an appointment with my honourable antagoniſt from a ſenſe of his own worth, and from a deſire I had to convince him, I deſerved not the uſage I had received from his hands.

A gentleman, for whoſe opinion I always had a great deference, has been pleaſed to cenſure me in very harſh terms, for daring to put ſuch a life as Mr. *Mills*'s in the ſame ſcale with mine. Without all doubt Mr. *Mills*, in reſpect of his relations in life, the head of a family, and of a numerous dependance, *had reaſons fully ſufficient to ſatisfy even, one would think, the moſt ſcrupulous mind on theſe occaſions, for refuſing any iſſue of this ſort, eſpecially with me*; as my life might be ſaid to be of real conſequence to none but myſelf; and, having but few connections, I was therefore not his equal. Mr. *Mills* a father, and a huſband; myſelf ſingle, and having no dependants who immediately drew the means of ſubſiſtance from me. But when Mr. *Mills* himſelf thought proper to wave theſe conſiderations, when himſelf propoſed the iſſue, was it my part to refuſe? could I have declined it, and have ſecured myſelf from his contempt? I ſolemnly declare any honourable means I would with joy have made uſe of for that purpoſe, which I could have ſuggeſted to myſelf on this moſt unfortunate occaſion.

Happy would it have been for Mr. *Mills*'s family in particular, happy for the world in general, had Mr. *Mills* thought of ſuch reaſons as his prudence might have dictated to him to have declined his meeting me. His family would yet have been bleſſed with a father, his acquaintance and dependants with a friend and protector, and the world with a man who did honour to the community in which he lived: myſelf would not then endure the cruel regret of having, though much againſt my will, occaſioned the untimely death of a gentleman whom I much reſpected; and whoſe friendſhip and eſteem, could I by any honourable means have procured, I ſhould have ſet the higheſt value on.

I fear, and with too much reaſon, my melancholy example will ſcarce have influence enough with the generous and brave, intirely to diſcountenance a practice thus productive of the greateſt evils. Let it however influence every gentleman to fear nothing ſo much as a falſe ſhame, to acknowledge when they have done wrong, and never to be above making reparation for whatever injuries they may accidentally do to the character of another. The fear of death is eaſily overcome, *eſpecially as the conqueſt flatters and allures the brave, and bears the name of courage.* What a man of honour ſhould much more endeavour, is the conquering a falſe ſhame, which makes them obſtinately perſiſt in vindicating what they know to be wrong; and a reſolution to overcome this falſe ſhame is more worthy the name of courage, than the mere contempt of death, which can never be frightful to a man, who thinks properly on it's nature.

I ſhall cloſe here this letter. If any reflections ſhould occur to you on the ſubject which you may think uſeful to mankind, I hope, for the general good, you will generouſly make them publick. My ſhort exiſtence here permits me not to make a reviſion of theſe ſheets. I therefore flatter myſelf, if you (as you were pleaſed to tell me you would) commit them to the preſs, you will correct my errors, and dreſs the language as you think proper; ſo that the truth of the facts I have ſtated may appear, and the whole be rendered as intelligible as poſſible.

May that infinite and moſt merciful God, the ſupreme author of all good, who has thus providentially ſupported me under a courſe of afflictions the moſt terrible to human nature, enable me with conſtancy to endure the laſt concluding ſhocking period, that is to cloſe my exiſtence in this life, and receive me into an eternity of happineſs hereafter. May the ſame good God bleſs and protect you, Sir, and all your's. I return you my ſincereſt thanks for the generous part you take in my afflictions. Once more let me pray God to bleſs you, and receive into his mercy,

Your affectionate and obliged,

humble ſervant,

J. BARBOT.

P. S. It may be worth obſerving, that before the ſeventh of *November*, I was in perfect charity with all mankind, and particularly that I had a ſincere eſteem for Mr. *Mathew Mills*; and as I was at *Nevis* from the ſixth to the nineteenth of *November*,

November, I cannot therefore give any reaſon, that ſeems probable with myſelf, to account for *Patience Dorſet*'s evidence. As to Mr. *Armour*, whether before Mr. *Armour* joined the company, I had been *praiſing Mr.* Mills, *and concluded with ſaying, his behaviour ought never to be forgotten, and be miſunderſtood me*, God alone knows. This I know, I might have praiſed him, but could not have ſaid any thing that could any way tend to the meaning Mr. *Armour* ſeems to have underſtood I had. For *Patience Dorſet*'s evidence (as I ſaid before) I cannot account at all, and indeed *it is ſo unuſual and foreign to my general diſpoſition to deal out threats or menaces*, that I cannot form a conjecture to excuſe her.

To *J*———*W*———Eſquire.

SIR, *St. Chriſtopher's, Jan.* 17, 1753.

I HAVE underſtood, with great concern, the world ſeverely cenſures doctor *Webbe* on my account, and imagine I was actuated by his advice, and that he urged me to bring the unhappy difference between Mr. *Mills* and myſelf, to the tragical period that put an end to it with his life; and this I am told is the rather believed, becauſe I have not, in the account I have given you of this unfortunate affair, in direct terms denied his knowledge of my intention in this matter. I do therefore in juſtice to this gentleman, in the moſt ſolemn manner aſſure you, that he knew nothing relative to my deſign of fighting with Mr. *Mills*, nor of any quarrel between us; nor did he ever make uſe of any argument to induce me, either directly or indirectly, to act as I have done with Mr. *Mills*; but the whole tranſaction was entirely carried on by myſelf with the utmoſt privacy, without conſulting, or adviſing, with any perſon whatſoever. Some other particulars I could have wiſhed to enlarge upon, which I have heard is reported to the world to the diſadvantage of both doctor *Webbe* and myſelf; but the more important buſineſs I have now upon my hands, prevents my ſaying any thing about them. I have expreſſed myſelf pretty fully on this occaſion to the Reverend Mr. *Edwin Thomas*, to whom, for further information, when I am no more, I beg you would apply yourſelf. I am, with my ſincereſt wiſhes for your welfare,

SIR,

Your obliged humble ſervant,

J. BARBOT.

The

The following LETTER was ſent to the Publiſher, while the Tryal was preparing for the Preſs.

SIR, *St. Chriſtopher's, Feb.* 25, 1753.

I HAVE peruſed the unhappy man's narrative which you ſent me; and which I now return you: but I am ſo far from entertaining a better opinion of him from it, that I can ſcarce help ſaying, as was formerly done to one who had made a lame and laboured defence to an accuſation preferred againſt him: "Before you made this defence of yourſelf, I "was inclined to think favourable of your "cauſe; but your very defence has made me "think worſe of it than I did before." For, beſides the traſh and tittle tattle it is ſtuffed with, it contains little more than a ſet of romantic and chimerical notions, which filled his head; and which appear to have led him on to the unfortunate event for which he ſuffered: but has nothing in it of ſolid judgment, and little of juſt reflection; ſave what he ſays of the folly of duelling; which to is ſo ſuperficial, as ſcarce to be ſkin-deep; and ſeems to be much more of the head than the heart.

The motive he aſſigns for his undertaking this matter, is the moſt extrordinary and whimſical that ever was heard of; *viz.* the getting the good-will of Mr. *Mills*. To quarrel with a man, and make an attack upon his life, muſt be confeſt to be a very ſtrange way of beginning a friendſhip with him; and ſavours much of that diſtemperd ſtate of mind which he deſcribes himſelf, to have been in for ſome days after the ſale of the eſtate at *Nevis*; or, more properly, from a little before it; when he ſays he took up that ſecret reſolution of reſenting any affront he might receive.

For that which has ſo much been made the grand queſtion in this affair, *viz.* whether, or how far, it was what is ordinary called a fair duel; I fear 'tis among thoſe matters which muſt reſt, to be aſcertained, 'till the great day, when the truth of all things will be made known. I know, there are, who make no ſcruple to decide on both ſides of the queſtion: but for myſelf, I pretend not to form ſo peremptory and concluſive a judgment of the matter: for, I confeſs, either ſide has it's difficulties for me; and there are appearances which draw ſtrongly on the part of both. The paſſions and prejudices of the friends, relations, and dependants, of Mr. *Mills* on the one hand; and a certain ſpirit of diſcontent and diſſatisfaction at almoſt every thing that is done in a courſe of juſtice, which reigns in many, on the other; too readily incline the one and the other to believe as they would have had the thing to have been. Perhaps the matter was ſuch, that were all the circumſtances of it fully known, people would be juſt as much divided in their judgments, how far it ought to be called fair, as they are, now that the circumſtances and manner of it cannot be certainly known. But as the fact, however committed, was a crime, meriting death by the law; 'tis plain he very juſtly ſuffered; and how far it was done fairly or not (as the term is) is now become a queſtion of pure curioſity only. Indeed were it really a fair duel, (to keep ſtill to the phraſe in vogue;) the rancour with which he purſued his revenge for the imagined affront; ſo agreeable to the reſolution he ſays he took up at the time of the ſale; and ſo apparent from the declaration which the young woman proved he made on the tenth of *November*; makes the matter ſo literally to have been the effect of *malice prepenſe* (as the law phraſes it) as in a very great meaſure to exclude it from a claim to that indulgence, which has been ſo often ſhewn in the caſe of duelling; and where the repairing a man's own honour, and not the death of his antagoniſt, was the point in view.

Indeed there are who pretend to diſbelieve, after all, the truth of the young woman's teſtimony: but ſurely, there muſt be a very eminent want of either candour or judgment in any one, to call it in queſtion: not only, as her evidence was ſupported by two others; but alſo, as he has now confeſt in his narrative, that the perſons who proved his being on that day at Mr. *Webbe*'s, were plainly miſtaken: and indeed the moſt poſitive of them was manifeſtly confuted on the tryal: ſo that the matter is clearly reduced to this; whether the three witneſſes were forſworn, or he (I won't ſay wilfully perſiſts in a falſhood; but) is miſtaken. Whether three indifferent perſons of unimpeached characters, or a criminal in his own caſe, be the rather to be believed, ſhould ſcarce ſeem to be a queſtion; but were it one, it were eaſily, in the preſent caſe, made none at all, by a circumſtance (not thought neceſſary, it ſeems, to mention on the tryal; but) which ſeveral can teſtify the truth of, *viz.* that the young woman declared the matter, in merriment, and in a kind of wonder at a declaration which ſeemed ſo much out of character, the very day after it was made; ſo that the ſame remark, which (I think it was) one of the council made on the tryal, as to what had been declared by the two negroes; one at *Frigate-Bay*, and the other at *Nevis*, ſo nearly about the ſame time, may, I think, with equal juſtice, be applied here; and ſhe muſt either actually have heard him declare what ſhe ſwore ſhe did, or have known of his intention by mere inſpiration. Which of the two it was, I ſhall leave to the curious to determine. He ſays, in his poſtſcript to his narrative, he is at a loſs how to form an excuſe for her. Surely, it may juſtly be retorted on him, that in this particular, it is no eaſy matter to form one for him: nor can his denying his being on this iſland on that day, be accounted for, conſiſtently with his veracity, but by ſuppoſing, from the great diſtraction which he ſhews his mind to have been in for ſome days

after the ſale, he might come down to *Saint Kitt*'s, and go back again, without it's having made an impreſſion on his memory, to be found there at the end of about ſeven weeks: for it was juſt eight weeks from the tenth of *November* to his tryal: and he often declared, he did not know, till about a week or ten days before it, that there was ſuch an evidence againſt him. But when he himſelf has acknowledged he was ſo long under a miſtake (though ſo extremely poſitive) in aſſerting he was that day at Mr. *Webbe*'s; 'tis ſtrange and unreaſonable to expect that thoſe who have found him wrong in that, ſhould afterwards, againſt ſo many poſitive indifferent witneſſes, believe him to be in the right, when he fairly owns he can't be ſure where he was, and only believes he muſt have been at ſuch a place or ſuch a place.

But he ſeems very unlucky in the reaſon he aſſigns for the improbability of his having ſpoken thoſe words, *viz.* that ſuch menaces were very unuſual to him: ſeeing the ſame argument turned againſt him, would tend to deſtroy all the credibility of the moſt eſſential part of his narrative; I mean his meeting Mr. *Mills*, and fighting him fairly. For it muſt be allowed, that nothing could be more contrary to his known genius and behaviour than that; though the very circumſtance of his forming a purpoſe ſo foreign to his natural diſpoſition, and which appears from his narrative to have taken ſuch entire poſſeſſion of his fancy, ſeems in great meaſure to account for his having thus declared it; as being too much for his mind, and in a manner involuntarily eſcaping from him.

Yet what is ſtill worſe for him on this head, is, that there is one circumſtance relating to it, that bears hard upon his candour, as well as a good deal calls in queſtion the genuineneſs of the letters, which, he ſays, paſt between Mr. *Mills* and himſelf: which, by the way, when and where he took copies of, no where appears: and that they are not true copies in every particular, is very plain, if you'll believe himſelf: for he tells you his ſecond letter, *viz.* his reply to Mr. *Mills*'s firſt, was written between the eleventh and the ſixteenth of the month; and yet he dates it on the tenth. This, 'tis true, might be a miſtake: but, in the firſt place, if he was miſtaken in one particular, he might alſo be ſo in others; and, in the next place, 'twas very unfortunate for him to make a miſtake, which had ſo much the air of a wilful one, and ſeemed ſo evidently calculated to ſupport his pretence of being all that day at *Nevis*, and writing that letter from thence. But if it was ſo intended, 'tis plain he had forgot that he had ſaid it was written between the eleventh and ſixteenth, as indeed it is almoſt certain it was: for his boy, as many gentlemen remember, came on *Monday* the thirteenth to the lieutenant-general's, to enquire for Mr. *Mills*: on which day therefore, or the day before it, 'tis moſt likely it was written. So careful ought men to be in delivering a narrative to the world, to ſee that all the parts of it agree: and ſo little reaſon have they to be diſſatisfied that people ſhould make ſome queſtion of the reality of the other parts of it, when they find it ſo palpably wrong in ſo very ſuſpicious a one. I believe it may be almoſt needleſs to add, that two gentlemen and two ladies very diſtinctly recollect his being in *Baſſeterre* on that day; and the two latter, by circumſtances peculiar to the day itſelf.

The extreme regard he profeſſes for one, who need not be named, has prevented him from going further than to ſay, that that gentleman muſt have known it to be a will, which he executed at the tavern, *if he had recollected*, &c; but would not permit him to go ſo far as to ſay he certainly did know it; as it is not much to be queſtioned he could, with truth, and from his own knowledge, have affirmed. In another place, indeed, he downright convicts his friend of having ſaid what was not true: for he declares, the firing the piſtols, by way of exerciſe, was his own propoſal: whereas his friend ſwore on the tryal, it was not the priſoner, but he himſelf, that had propoſed it. Thus the friend risked his credit (to ſay no worſe) in denying that he knew what the priſoner executed, to be a *will*; and in taking on himſelf the having propoſed the firing the piſtols; for the ſake of taking off two pregnant points of evidence againſt him; and the other very generouſly takes the load back on his own ſhoulders, to break the force which the belief of his friend's having propoſed it, muſt have added to the imputation he knew he lay under, of having been privy to, and promoted the fact, of which himſelf was convicted. Surely, the friendſhip of *Pylades* and *Oreſtes* ſcarce exceeded that of theſe two: had the foundation of the latter been but as virtuous!

As to what is commonly urged in favour of the veracity of his narrative in general; that, in common charity, we ought to believe it, as being the declaration of a dying man: in the firſt place, it is not ſo very eaſy to underſtand how people can believe a thing whether they will or no: in the next place, the circumſtance of the falſe date of his ſecond letter, is undeniable; and greatly impeaches (if not the truth and candor, yet) the accuracy and exactneſs of the whole. Further, 'tis certain, that the narrative was writ, and read by many perſons, ſeveral days before he ſuffered; and when his friends were, with his knowledge, actually ſolliciting his reprieve, as a ſtep to a pardon: to the obtaining which, the belief of the truth of what was ſet forth in his narrative, muſt have been thought very conducive. Theſe I urge only as circumſtances ſufficient to ſhew the weakneſs of that ſilly argument, that his narrative ought to be believed, as being the declaration of a dying man: and not that I therefore pretend flatly to pronounce againſt the truth or ſincerity of it; or to call it all a feigned tale: for, to ſay truth, I am not of the opinion that it is ſo; though I own myſelf in doubt as to ſome parts of it; and, upon the whole, look upon it to be of the mixt kind; and to contain much truth, with ſome falſhood; or (to ſay more properly) ſome *ſoftenings* and *qualifyings* in ſome of the moſt material parts of it; and particularly about the cataſtrophe of the tragedy. A great deal of vanity, with a romantic caſt of mind, (which I take to have been the true characteriſtic of the poor man in queſtion) may make a coward occaſionally brave,

brave, on the one hand; and induce a man not generally given to falſhood, to make partial miſrepreſentations, and ſuppreſs, or alter, ſome circumſtances, to preſerve his fancied honour, on the other: and ſo, partly by thinking it allowable, for his reputation's ſake, in ſome points, to deceive other perſons, and partly by really deceiving himſelf in others; between a good deal of truth, a good deal of vanity, and ſome miſtake, all put together in ſome confuſion, make up juſt ſuch a medley, as his narrative appears to be. But I can't entirely quit this point, without a ſmall obſervation on the conduct of certain perſons, who ſubſcribed a petition, which was preſented to the commander in chief, for a reprieve for him; in which they aſſert it is *apparent that Mr.* Mills *was the aggreſſor*. Now, for many gentlemen, who (as is uſual in ſuch caſes) might be prevailed on, from the eaſineſs of their natures, to lend their names to this petition; and, without critically examining, only conſidered it, in general, as what is commonly called, a good natured thing; it might not be ſo fair to look upon them as accountable for every particular expreſſion in it: but methinks it is but juſt to aſk thoſe, who had the more immediate hand in drawing and ſetting it on foot, from whence it is, that *apparence* ariſes: becauſe every one, perhaps, may not ſo readily be inclined to take for goſpel, all that a criminal, under actual condemnation, ſhall aſſert in exculpation of himſelf, at a time that his friends are ſolliciting his reprieve. And one may venture to affirm, that the world in general (whatever theſe gentlemen may do) knows of nothing elſe from whence that matter is ſo very apparent.

As I have ſaid ſomething of this unhappy perſon's character, it may, perhaps, be ſatisfactory to many who are wholly unacquainted with that, and his hiſtory, to know a little more of both.

He was born in *London*, where his father, who is a working ſilverſmith, (a man of ſome ſubſtance in the world, and, as it is ſaid, of a good character) ſtill lives. At about fourteen years of age, he was put clerk to an attorney in *Staples-Inn* in *London*; with whom he ſerved a clerk-ſhip for the uſual term of five years. After that time expired, he came from *England*, in the year 1746, in character of clerk to a gentleman of the profeſſion of the law in *Antigua*. With this gentleman he lived near two years; and then, having not been very prudent in his conduct; and having beſides, contracted ſome debts there, to the amount of 2 or 300 *l.* currency, he came to *Nevis*; where he made a very cloſe acquaintance with the family he mentions in his narrative. Having for ſome time lived a very idle life there; and given away, and otherwiſe unprofitably diſpoſed of, a conſiderable part of a ſmall cargo of goods, of about the value of 4 or 500 *l. ſterling*, which his father had ſent him to ſell, and ſpent the produce of the reſt of it; and being at length reduced to extreme neceſſity, he came, about three years ago, to this iſland; where, by a critical ſcarcity of attornies at law, he got himſelf admitted one in the ordinary court of common law; and in the very firſt year, had ſuch a run of buſineſs, as to enable him to clear off what debts he owed in the *Weſt Indies*; which amounted to near 400 *l.* currency; and to put a handſome ſum of money in his pocket beſides. The firſt year of his being here, he behaved with induſtry and fairneſs; but ſoon after, from a natural diſlike to buſineſs, and too great a diſpoſition to get money by the moſt likely means that offered, he greatly neglected his client's affairs, and fell into a way of buying up deſperate debts; which he commonly found means ſo to turn and twiſt about, as to make them good in the end; by getting ſtill better and better ſecurity for them every time he ſued for them, and by adding each time the intereſt and coſts: by which means he made them at once larger and more ſecure. Thus by the diſſatisfactions of many who employed him, and ſome ſmall imputations he drew on his character; as alſo by perſons of leſs queſtionable reputation, and more induſtry, coming to practiſe as attornies in the ſame court, his practice was greatly reduced: and yet, by one means or another, he became at length worth, as he ſays, (and, I believe, truly) about 800 *l. ſterling*. His age, by the plate on his coffin, appeared to be but twenty-five: though I ſhould think he muſt have been two or three years older: but of this I have no certainty.

For the reſt, he had a good ſchool-education; and knew *Latin*, and ſpoke *French*, very well. He had made ſome progreſs in the mathematics; and knew, and was very apt in, figures; and was a tolerable proficient in muſic. He had a pretty good taſte of literature in general; and a good deal of general light reading; but his judgment was by no means ſolid; and his mind (as I have before obſerved) of a romantic caſt; though not without ſomething of ingenious in it; and ſome conſiderable ſprightlineſs of parts. To which I muſt add, he was a very ready writer, in either ſenſe of the word; having both great freedom and quickneſs of hand, and fluency of expreſſion. He was remarkably courteous in his common behaviour; but his politeneſs and deportment were of that ſort, which is uſually diſtinguiſhed by the name of priggiſm: which the littleneſs of his perſon (a circumſtance well worthy the attention of perſons of the ſame ſize and turn) contributed to make much more obſervable, and thereby to ſet him in a more ridiculous and contemptible light; as a certain pertneſs in his manner, and forwardneſs in his behaviour; with a vanity conſpicuous in all he ſaid and did, rendered him often very troubleſome and diſguſting.

This you may depend on as a juſt character of him, from one who knew him; and is,

SIR, *Yours*, &c.

FINIS.

Ex. E. 14. a.

brave, on the one hand; and induce a man not generally given to ballooning, to make partial ascents, and hopping, or almost circumstances, to perform his flights from, on the other: and to, partly by eluding a slowness, for his reputation's sake, in some points, to deceive our readers, and partly by really deceiving himself in others; between a real dial of truth, a mere dial of vanity, and some mere table, almost regular in some certain, make up just twelve nearly in his account, appear to be. But I can't exactly quit this point, without a final observation on the conduct of certain persons, who, following a practice, which was prevalent in the country, when was far, in which they allow it is apparently very ill-suited to the present. Now, for many gentlemen, who (as is usual in such cases) might be presumed on, from the ordinary of their nature, to look their names to this publication, and, without minutely entering into it, in general, as what is commonly called, a good rational thing; thought not be to run upon them as accountable for every individual opinion in it; but rather to look to the view in the mere language, and to the drawing and tracing it as a line, from whence it is, these persons must, by every one, perhaps, not to be called for publication, and consequently, shall, in a case like this, be considered as [illegible] following the subject. And one may venture to affirm, that this would in general [illegible] their qualities may go through the whole from whence that opinion is to very [illegible].

As I have full [illegible] the [illegible] person's character, it may [illegible] be necessary to many who are wholly unacquainted with that, and his history, to know a little more of him:

He was born in London, where his father, who is a writing [illegible], is one of the [illegible] in the world, and, as a [illegible] good [illegible] man. At [illegible] years of age, he was put [illegible] apprentice to a [illegible] in the city, for the usual term of [illegible] years, in the course of the which he [illegible] and, having not been very [illegible] and having [illegible] extra hours to the account of [illegible] very [illegible] to [illegible] more than [illegible] very [illegible] and [illegible] his [illegible] lived a very [illegible] and other [illegible] considerable part of a [illegible] the value of a [illegible] ther had [illegible] him to [illegible] of the [illegible] of it, and being at [illegible]

to various [illegible], he came, about [illegible] years ago, to the [illegible], where, by a strict [illegible] strictly observing [illegible] he got himself admitted one of the ordinary [illegible] of [illegible] and, in the very first [illegible] a run of [illegible], as to [illegible] he owed [illegible] to [illegible] [illegible] and to pay a handsome [illegible] of money in the [illegible]. The first year of his being free, he [illegible] with industry and [illegible], [illegible] than a moderate [illegible] to [illegible], and [illegible] a little [illegible] cow to get money by; with which he [illegible] his father's affairs, and [illegible] the way of buying up [illegible] which he [illegible] to [illegible] with [illegible] and [illegible] by [illegible] and [illegible], so as to make them good in the end, by getting full [illegible] and [illegible] for [illegible] when they [illegible] due. [illegible] by the [illegible] of many who employed him, and [illegible] impudence [illegible] his character, as [illegible] by [illegible] of his [illegible] and [illegible] impudence in the [illegible] manner; and [illegible] by [illegible] and [illegible] [illegible] [illegible]